80922-4
No. 34630-3-II

DIVISION II, COURT OF APPEALS
OF THE STATE OF WASHINGTON

JESSE MAGANA,

Plaintiff/Respondent

v.

HYUNDAI MOTOR AMERICA;
HYUNDAI MOTOR COMPANY,

Defendants/Appellants

and

RICKY and ANGELA SMITH,
husband and wife, et al.,

Defendants/Respondents

ON APPEAL FROM CLARK COUNTY SUPERIOR COURT
(Hon. Barbara D. Johnson)

APPELLANTS' OPENING BRIEF

Michael B. King
WSBA No. 14405
John B. Schochet
WSBA No. 35869
LANE POWELL PC
Attorneys for Appellants Hyundai Motor America and Hyundai Motor Company

Lane Powell PC
1420 Fifth Avenue, Suite 4100
Seattle, Washington 98101
Telephone: (206) 223-7000
Facsimile: (206) 223-7107

Jeffrey D. Austin
OSBA No. 83142
Heather K. Cavanaugh
WSBA No. 33234
MILLER NASH LLP
Attorneys for Appellants Hyundai Motor America and Hyundai Motor Company

Miller Nash LLP
111 S.W. Fifth Avenue, Suite 3400
Portland, Oregon 97204
Telephone: (503) 224-5858
Facsimile: (503) 224-0155

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

STATUTES AND COURT RULES

MISCELLANEOUS

ASSIGNMENTS OF ERROR

Defendants and Appellants Hyundai Motor America and Hyundai Motor Company (collectively "Hyundai") make the following assignments of error:

1. The trial court erred when it granted the Smith Defendants' Motion to Determine Fault Issues. See VRP (Nov. 7, 2006) 44:14-18; 46:25-47:5 (Oral Ruling); (CP 2032-33) (Order, Dec. 15, 2005). The trial court also erred when it denied Hyundai's Motion for Reconsideration of the Order Granting the Smith Defendants' Motion to Determine Fault Issues. Id.

2. In its Findings of Facts and Conclusions of Law Re: Default Judgment, the trial court entered 74 Findings of Fact. See (CP 5311-35). Hyundai has assigned error to 52 of those Findings of Fact in whole or in part (including FOF 6-7, 12-16, 18, 20-21, 23-24, 26-30, 33-37, 39-49, 51-53, 55-56, 58-66, 68-70, and 73-74). Pursuant to RAP 10.4(c), Hyundai attaches as Exhibit A of the Appendix to this Brief a copy of the Findings of Fact and Conclusions of Law, with the Findings or portions of Findings to which Hyundai assigns error highlighted in yellow.

3. In its Findings of Facts and Conclusions of Law Re: Default Judgment, the trial court entered eight Conclusions of Law. See (CP 5335-38). Hyundai has assigned error to five of those Conclusions of Law (including COL 4-8). Pursuant to RAP 10.4(c), Hyundai attaches as Exhibit A to the Appendix of this Brief a copy of the Findings of Fact and Conclusions of Law, with the Conclusions of Law to which Hyundai assigns error highlighted in yellow.

4. The trial court erred by entering a default judgment against Hyundai, and by awarding plaintiff prejudgment interest. See (CP 5341-44) (Judgment).

5. The trial court erred by denying Hyundai's Motion for Reconsideration of the Default Judgment. See (CP 5901-03) (Order Denying Defendants' Motion for Reconsideration).

6. The trial court erred by granting Plaintiff's Motion in Support of Imposition of Reasonable Attorneys' Fees and Costs Against the Hyundai Defendants, and by granting Plaintiff's supplemental fees and costs requests.[1]

STATEMENT OF ISSUES

The following issues pertain to the assignments of error:

1. Austin-O'Neil Discovery Agreement. Hyundai attorney Jeffrey Austin stated in a declaration that he and Magana attorney Peter O'Neil reached an agreement limiting discovery in 2001. Austin sent O'Neil a letter in June 2001, confirming the four areas where the parties had agreed Hyundai would provide additional discovery. O'Neil did not object, or respond, to the letter at the time, nor did he object to the ensuing production by Hyundai consistent with the letter's terms. O'Neil now claims there was no agreement. Is the trial court's finding of no agreement error? (Assignments of Error Nos. 2-6.)

[1]The trial court entered two sets of findings and conclusions in support of its fees awards (on March 30 and April 27, 2006, respectively), both of which are the subject of a Supplemental Designation of Clerk's Papers, being filed contemporaneously with this Brief.

2. Finding of Willful Discovery Violations. Hyundai's answer to Request for Production 20 stated there were no claims or lawsuits regarding seat backs in 1995-1999 Hyundai Accents. Under the trial court's definition of claim based on the record at the close of an evidentiary hearing, there were no such claims or lawsuits when Hyundai answered RFP 20. Was Hyundai's response to RFP 20 accurate at the time it was made? And considering documents that did not exist until later, whether Hyundai's discovery responses were ever misleading depends on the definition of "claim." This issue did not arise until immediately before the evidentiary hearing on sanctions, and Hyundai did not have a fair opportunity to obtain and present evidence addressing it. The trial court found Hyundai's responses misleading, emphasizing the lack of evidence from Hyundai on this issue. Hyundai presented that evidence on reconsideration, which the court refused to grant. Did that refusal deprive Hyundai of a fair hearing on the issue of the meaning of claim? (Assignments of Error Nos. 2-6.)

3. Finding of Material Prejudice. Magana has not made a serious attempt to investigate the late-produced documents, to determine whether any of them might be admissible at trial, or to establish that a fair trial is not possible. Indeed, the evidence shows that a fair trial is still possible. Washington law allows default judgment as a discovery sanction only if the discovery violation makes a fair trial no longer possible. Should the sanction of default be reversed? (Assignments of Error Nos. 2-6.)

4. Remand to a New Trial Judge. Judge Barbara Johnson, the trial judge at the first trial and in the sanctions proceedings, has repeatedly

made statements demonstrating her bias against corporations in general and Hyundai in particular. After defaulting Hyundai, Judge Johnson accepted a "judge of the year" award from the Washington State Trial Lawyers Association. Magana's counsel had nominated her for that award. Should this case be remanded to a new trial judge to ensure the appearance of fairness? (Assignments of Error Nos. 1-6.)

5. Prejudgment Interest. At the first trial, Magana's counsel encouraged the trial court to make a clear legal error. This Court reversed on the basis of that clear legal error, ordering a new trial on Hyundai's liability. Should Magana be denied prejudgment interest, which would compensate him for the delay between the first and second judgments, a delay caused by his counsel's own misconduct in trying to place excluded evidence before the jury? (Assignment of Error No. 4.)

6. Status of the Smith Defendants. This Court has already affirmed the Smiths' liability. If Hyundai is ultimately held liable, Hyundai and the Smiths will be jointly and severally liable. Because the Smiths are highly unlikely to pay more than $25,000 of the judgment, Hyundai is willing to waive any contribution cross-claim against the Smiths if Hyundai loses at retrial. Should the Smiths be barred from participating in the retrial if Hyundai agrees to waive any cross-claim? (Assignment of Error No. 1.)

I.

SUMMARY INTRODUCTION

This appeal presents a default judgment that fails the basic requirements of due process. The judgment should be vacated and the case remanded for further proceedings to a different judge.

Jesse Magana was injured in a single vehicle car accident, and three years later filed suit in Clark County Superior Court. The defendants included the driver (Ricky Smith), and the car's manufacturer (Hyundai Motor Company) and its American subsidiary (Hyundai Motor America).

Ricky Smith failed to answer, and was defaulted. Magana and the Hyundai defendants vigorously, but cooperatively, litigated the case, including discovery during which Hyundai produced well over 11,000 pages of documents and some 100 design tests for the vehicle at issue, a 1996 "Accent."

Magana's defective design theory shifted back and forth during the course of discovery. Initially alleging his injuries were caused by a defectively designed front seat back, Magana later alleged that an overpowered air bag caused the seat back to fail.

During the period when Magana was focused on the air bag, the parties reached agreement on the scope of so-called "other similar incidents" ("OSI") discovery. Magana had demanded Hyundai produce a wide variety of documents relating to allegations of seat back failures in every Hyundai vehicle type manufactured from 1980 to the present. Hyundai (understandably) demurred to so sweeping -- and burdensome -- a demand, but also informed Magana's counsel that Hyundai had no documents for any lawsuits or claims for personal injury or fatality, arising out of alleged seat back failures in the Accent for its 1995 through 1999 model years. After Magana added a similarly sweeping demand for air bag OSI documents, and Hyundai made a similar demurrer, Magana's counsel generally objected

to Hyundai's limited responses, demanding that the requests be answered "as written." See (CP 3928) (letter from Magana counsel Peter O'Neil to Hyundai counsel Jeffrey Austin, April 26, 2001, at 2). Discussions ensued, producing an agreement in the Summer of 2001 limiting the scope of Hyundai OSI production obligations to "claims relating to aggressive deployment of the passenger side air bag in the 1995-1997 Hyundai Accent." See (CP 6939) (letter from Austin to O'Neil, July 11, 2001, at 5). Hyundai duly complied with that agreement, producing documents relating to 19 lawsuits and two attorney demand letters.

After expert witness discovery in the Fall of 2001 disclosed basic weaknesses in the causation elements of his air bag theory, Magana shifted back to his seat back claim (although fending off an attempt by Hyundai to have the air bag claim struck from the case, by partial summary judgment). When the case went to trial in June of 2002, Magana's primary theory "was that if the seat back had been more rigid, it would not have given way when subjected to the centrifugal forces" created during the accident. Magana v. Hyundai Motor America, 123 Wn. App. 306, 318, 94 P.3d 987 (2004). Whether the seat back should have been more rigid, and whether Magana was even seated in the front passenger seat when it gave way, were both closely contested issues. The jury resolved both against Hyundai by a 10-2 vote, and awarded Magana over $8,000,000 in damages for the injuries he sustained (including paraplegia) when he was ejected out the back of the vehicle.

Hyundai appealed, and this Court reversed because of a clear and prejudicial error. Over Hyundai's objection, the trial court had allowed one

of Magana's experts to testify to a theory of alternative seat belt design, in violation of Magana's expert opinion disclosure obligations. Although the court reconsidered and struck the testimony, at Magana's insistence and over Hyundai's exception, the court refused to tell the jury that the evidence had been stricken. Holding this to be a clear abuse of discretion, and prejudicial because of a substantial probability that the improperly admitted evidence affected the verdict, this Court ordered a new trial on liability issues.

The case returned to the trial court in the Spring of 2005, and Judge Barbara Johnson -- who presided at the first trial and retained that responsibility on remand -- set a retrial date of January 17, 2006. In September 2005, Magana requested an update of Hyundai's response to the seat back -- but not the air bag -- OSI's. This time agreement could not be reached, and Magana moved to compel. The court granted Magana's motion, and that November ordered production not only of lawsuit records, but also responsive entries in Hyundai's consumer "1-800 hotline" computer database. Hyundai duly complied, producing several boxes of documents relating to seat back lawsuits, and consumer hotline records.

Magana's counsel now confronted a dilemma. Either they requested a continuance to conduct the due diligence review necessary to determine whether any of the OSI discovery material could actually be admitted as substantive evidence at trial, or they stuck with the January 2006 retrial date and abandoned pursuit of OSI evidence.

Facing retrial of a closely contested case, Magana's counsel chose neither course. Instead, on the eve of Christmas Eve 2005, Magana's

counsel moved for a default judgment as a sanction for discovery violations. Although several violations were alleged, the case for a default centered on Hyundai's responses to Magana's seat back OSI requests. Initially, Magana claimed that Hyundai simply failed to respond when Magana objected to the scope of Hyundai's initial responses. When Hyundai introduced the evidence of the parties' subsequent agreement limiting Hyundai's discovery obligations, Magana raised a new theory, claiming Hyundai knew it had consumer "hotline" records of allegations of seat back failures in Accents, for model years 1995 through 1999, even as Hyundai responded it had no documents relating to lawsuits or claims alleging seat back failures in Accents for those model years. And at the evidentiary hearing requested by Magana and granted by the trial court, Magana asserted that Hyundai used a deliberately misleading definition of the term "claim," to avoid acknowledging existence of responsive consumer hotline records.

The trial court granted Magana's motion, and defaulted Hyundai. The court reinstated the original judgment, added prejudgment interest from the date of the June 2002 verdict, and awarded fees and costs associated with the sanctions litigation effort. The court embraced all but one of Magana's discovery violation claims, declining only the invitation to revisit the first trial itself. After the court denied Hyundai's motion for reconsideration, Hyundai appealed. Shortly after the appeal was underway, the trial court accepted the Washington State Trial Lawyers award for "Judge of the Year," for which she had been nominated by Magana's counsel.

This Court should reverse and remand to a new judge.

- Willfulness. The trial court's findings of willful discovery violations are substantively and procedurally untenable. The trial court found that the parties did not enter into a discovery agreement; that finding ignores uncontroverted evidence, including correspondence and the parties' course of conduct, which conclusively establish there was such an agreement. The court also found that Hyundai gave misleading responses to Magana's seat back OSI requests -- a finding that rests on an eleventh hour theory of willfulness, to which Hyundai was denied a fair opportunity to respond fully, and which is flatly contradicted by the court's own definition of the crucial term "claim."

- Prejudice. The trial court found material prejudice when such a finding was literally impossible to make at that point in the proceedings. The record conclusively established that the admissibility at trial of the OSI material could not be known without first subjecting the material to a lengthy vetting process, which Magana admitted could not be completed in time for the January 2006 retrial date. But if the vetting process could not be completed by then, by definition the trial court could not know whether Magana had, in fact, been prejudiced. Moreover, the only specific possible prejudice that Magana identified -- that the admissibility of some of the OSI's could no longer be established, because of the passage of time between when Hyundai "should" have produced them and when Hyundai did produce them -- could have been addressed by a remedy (involving limitations on Hyundai's right to challenge the admissibility of those records at trial), which would have preserved a fair trial for both parties.

In short, the trial court abused its discretion when it defaulted Hyundai. The default judgment should be vacated, and the matter remanded for a jury trial on the merits. And to preserve the appearance of fairness, this Court should order that a new judge preside over that retrial.

II.

STATEMENT OF THE CASE

A. February 15, 1997: Magana Is Seriously Injured in an Automobile Accident. February 8, 2000: He Files Suit.

This Court has previously described the basic facts of the 1997 auto accident in which Jesse Magana sustained the injuries that underlie this action. To summarize: On February 15, 1997, Magana was a passenger in a 1996 Hyundai "Accent," driven by Defendant and Respondent Ricky Smith. Smith's wife, Angela, was also a passenger. In the face of an oncoming truck, Smith jerked the wheel to avoid a feared collision. The car ended up in a violent spin, and the resulting centrifugal force threw Magana out the car's rear window. He survived, but was rendered paraplegic. See Magana, 123 Wn. App. at 309.

On February 8, 2000, Magana filed suit in Clark County Superior Court. See (CP 3-5) (Complaint). As to Hyundai Motor America and Hyundai Motor Company,[2] Magana's complaint stated that "[t]he Hyundai Accent's defective design was a proximate cause of Jesse Magana's

[2]Magana also sued Ricky Smith and the driver of the truck, Dennis Nylander. See (CP 4-5) (Complaint ¶¶ 3.2-3.3). Nylander was granted a summary judgment of dismissal and is no longer a party to this action. See Magana, 123 Wn. App. at 310. Hyundai is challenging the continued status of Ricky Smith as an active defendant in this case. See Statement of Issue No. 6, supra, at 4; § IV.D of the Argument, infra, at 99.

injuries and damages." See (CP 4) (Complaint at 2, ¶ 3.1). The complaint did not describe the nature of the alleged "defective design."

B. February to November 2000: The Parties Exchange Initial Discovery Requests. Magana Seeks Information on "Other Similar Incidents" While Hyundai Seeks Clarification of Magana's Design Defect Theory.

On February 10, Magana served his first set of interrogatories and requests for production of documents. See (CP 3715-32) (copy of first set of requests, attached as Ex. A to Decl. of Jeffrey O. Austin in Opposition to Motion for Sanctions).[3] Interrogatory No. 12 stated:

> Identify with name and model number all Hyundai vehicles that used the same (or substantially similar) front right seat as the 1996 Hyundai Accent.

(CP 3722) (first requests at 8). Request for Production No. 20 stated:

> Pursuant to CR 34, attach or produce . . . copies of any and all documents, including but not limited to complaints, answers, police reports, photographs, depositions or other documents relating to complaints, notices, claims, lawsuits or incidents of alleged seat back failure on Hyundai products for the years 1980 to the present.

(CP 3728) (first requests at 14).

Hyundai Motor America ("HMA") responded to those requests on April 5, 2000. See (CP 3734-56) (copy of responses).[4] In response to Interrogatory No. 12, HMA stated:

---

[3]Jeffrey Austin has served as lead local trial counsel for Hyundai since the beginning of this case. To supply the trial court with a single, comprehensive documentary history of the discovery at the heart of Magana's sanctions motion, copies of key documents were attached as exhibits to Mr. Austin's declaration. The declaration appears at Clerk's Papers pages 3703-13, and the exhibits (A through FFF) at pages 3714-4115. A list of the exhibits, including Clerk's Papers page cross-references, will be found for the Court's convenience at Ex. B of the Appendix to this Brief.

[4]The requests were nominally propounded to "[d]efendants" (continued . . .)

> The 1995-1999 model year Hyundai Accents used the same or substantially similar right front seat as the 1996 Hyundai Accent. No other Hyundai model automobile uses the same or substantially similar design for the right front seat as the Hyundai Accent.

(CP 3741) (responses at 8). In response to RFP No. 20, HMA stated:

> HMA objects to Request No. 20 on the grounds it is overly broad and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objections, HMA further responds that there have been no personal injury or fatality lawsuits or claims in connection with or involving the seat or seat back of the Hyundai Accent model years 1995-1999.

(CP 3750) (responses at 17).[5]

While Magana was propounding discovery requests concerning so-called "other similar incidents" (or "OSI's"),[6] HMA was propounding

---

(. . . continued)
(CP 3715) (requests at 1), but as to the Hyundai parties, the requests were in fact directed only to Hyundai Motor America, as Hyundai Motor Company had not yet been joined in the action, and would not be until the Fall of 2000. See (CP 3704) (Austin Decl. at 2, ¶ 3).

[5]Hyundai conducted a search for legal complaints and attorney demand letters in connection with or involving the seats or seat backs of the Hyundai Accent for model years 1995 through 1999. (CP 4979-80) (stipulation). Hyundai did not search the 900,000 entries in its consumer "1-800 hotline" computer records database, because such a search would have imposed the very burden to which Hyundai was objecting. (CP 4980) (stipulation at 2, ¶ 2); see (CP 3302-03) (Vanderford Decl. at 5-6, ¶¶ C.1-C.3); VRP (Jan. 18, 2006) 114:21-115:12 (Vanderford). Hyundai also did not believe those records constituted "claims," as that term was employed in RFP No. 20 (which demanded documents relating to the five specified, but undefined, categories of "complaints," "notices," "claims," "lawsuits," and "incidents"). The reasonableness of Hyundai's response constitutes one of the central issues of this appeal.

[6]"Other similar incidents" (or "OSI") is a term of art in the products liability field familiar to its practitioners, including counsel who litigate motor vehicle crashworthiness claims such as the present case. It is important to keep in mind that the phrase does not mean that the information subject to an "OSI" request does describe an "incident . . . similar" to the accident giving rise to the plaintiff's lawsuit. In fact, material
(continued . . .)

discovery requests seeking clarification of Magana's design defect theory. On April 12, 2000, Magana was served with HMA's first discovery requests, which included the following contention interrogatory:

> Interrogatory No. 6: State, with specificity, any and all defects in the design of the Hyundai Accent that form the basis of plaintiff's allegation in paragraph 3.1 of your complaint.

(CP 3761) (HMA's first requests at 4) (copy attached as Ex. C to Austin Decl.). Magana responded that:

> . . . at this time plaintiff states that the Hyundai Accent seating system was defectively designed in that it buckled and allowed Mr. Magana to be ejected through the rear hatch back window. This seatback failure was the proximate cause of Mr. Magana's injury. This answer may be supplemented as discovery continues.

(CP 3772-73) (Magana responses at 4-5).

That June, Jeffrey Austin wrote to Magana's counsel (Paul Whelan), seeking clarification of Magana's response. See (CP 3811-15) (copy of letter dated June 29, 2000). Requesting that his letter be "treat[ed] . . . as an effort to meet and confer,"[7] Austin stated:

> . . . we are entitled to know what portion or part of the "seating system" you claim was defectively designed and how it was defective, and what part of the seating system you claim "buckled" thereby proximately causing plaintiff's injuries. Obviously, we need to retain our own experts to evaluate plaintiff's claims and need this basic information to properly prepare a defense.

(. . . continued)
produced pursuant to an OSI discovery request usually turns out to describe an incident that is not similar to the plaintiff's accident, and therefore not admissible into evidence at trial. See, e.g., § IV.A.2.d, infra, at 77-81.

[7]The phrase "meet and confer" refers to the requirement of Washington practice that parties attempt to resolve discovery disputes before seeking relief from the court. See, e.g., (CP 5321) (Finding of Fact No. 31) (acknowledging that "CR 26(i) requires counsel to confer prior to bringing motions to the court regarding discovery").

(CP 3812) (letter at 2). That August, Magana served supplemental discovery responses, including to the design defect contention interrogatory. See (CP 3830-34) (Magana's supplemental responses). Magana's amended answer to the design defect interrogatory stated:

> Plaintiff amends and supplements the response to [Interrogatory] No. 6 by stating that the passenger restraint system of the Accent, including seatbacks, belts, and airbag system, was defectively designed and led to the injuries suffered by Mr. Magana. Mr. Magana was belted in the right front seat. As the Accent hit a small tree he moved forward. The air bag fired. Mr. Magana was knocked back by the large passenger side airbag, collapsing the seat back. The Accent tipped to its left and pivoted around a large tree. Mr. Magana was ejected through the rear hatch window and injured as a result.

(CP 3833) (supplemental responses at 4) (emphasis added).

One month later, Magana served his first discovery requests on Hyundai Motor Company ("HMC"). See (CP 3836-55) (copy of requests). Magana reiterated the OSI requests propounded to HMA, and added an inquiry focused on air bags:

> Request for Production No. 21: Pursuant to CR 34, attach or produce . . . copies of any and all documents, including but not limited to complaints, answers, police reports, photographs, depositions or other documents relating to complaints, notices, claims, lawsuits or incidents relating to injuries caused by airbags on Hyundai products for the years 1980 to present.

(CP 3850) (requests to HMC at 15).

Hyundai Motor Company responded on November 21, 2000. See (CP 3896-3919) (responses). HMC reiterated HMA's answer that no other Hyundai vehicle has a right front seat with the same substantially similar design as the 1996 Hyundai Accent. See (CP 3901) (HMC response to Interrogatory No. 11). Regarding the OSI document production requests

(No. 20 concerning seat backs and the newly added No. 21 concerning air bags), HMC initially objected to both as "overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence," and then stated:

> Plaintiff's counsel has represented that the design defect alleged in the complaint is a defective design of the front passenger seat and airbag system in that the airbag allegedly knocked plaintiff back collapsing the front passenger seat with plaintiff ultimately being ejected through the rear window. Without waiving these objections, HMC further responds that there have been no personal injury or fatality lawsuits or demand letters in connection with or involving any claim that due to the allegedly defective design of the front passenger seat and airbag system in the 1995-1999 model year Hyundai Accent the airbag allegedly knocked a person back collapsing the front passenger seat.

(CP 3910-11) (responses to RFP Nos. 20 & 21).

C. Spring-Summer 2001: Following Initial Document Production by Hyundai Totaling Over 11,000 Pages, the Parties' Counsel Meet and Confer to Resolve Outstanding Discovery Issues, and Reach an Agreement Under Which Hyundai's OSI Production Is Limited to Air Bag Lawsuits and Demand Letters.

By December 2000, Hyundai was ready to produce over 11,000 pages of documents, subject to final agreement on the terms of a protective order. See (CP 3924-25) (letter from Austin to Peter O'Neil dated Feb. 6, 2001, noting on page 2 Hyundai's readiness to produce documents). During January and February of 2001, the parties worked to resolve the protective order issues, culminating in entry of an agreed protective order on February 20, 2001. See (CP 18-24) (order). On April 26, following Hyundai's document production pursuant to the terms of the agreed order, Magana counsel Peter O'Neil wrote to Jeff Austin, thanking him for what O'Neil called "a good initial production of documents

by Hyundai." (CP 3927) (letter from O'Neil to Austin at 1) (copy of letter attached as Ex. E of the Appendix to this Brief). O'Neil also stated he "ha[d] some disagreements about what was not produced by Hyundai . . . and wanted to get those on the table now." (Id.) (emphasis added).

As previously discussed, Magana initially identified the cause of his injuries as "seatback failure," in which the "seating system . . . buckled and allowed Mr. Magana to be ejected through the rear hatch back window." (CP 3773) (Magana's response to HMA's design defect contention interrogatory). Nothing was said about the Accent's air bag. But by the Fall of 2000, Magana's theory of the case had changed. Now Magana claimed that an overpowered air bag caused the front passenger seat to collapse backwards, resulting in his ejection. See (CP 3833) (Magana's supplemental response to HMA's design defect contention interrogatory) (describing the "fir[ing]" of the "large passenger side airbag" as having "knocked back" Magana, "collapsing the seat back" and causing his ejection).

Supplemental discovery requests reflected Magana's change of theory. See (CP 3867-73) (Magana's fourth set of production requests to HMA); (CP 3875-80) (Magana's second set of production requests to HMC) (both requesting documents relating to various aspects of air bag testing and performance, including the "aggressivity" of the passenger air bag installed in 1995-1997 two door Hyundai Accents). The change was confirmed by Mr. O'Neil's April 26 letter. Discussing a request that HMC identify the person responsible for communicating with the National

Highway Traffic Safety Administration concerning an NHTSA investigation into the Accent passenger air bag, O'Neil stated:

> It is hard to understand how this particular subject would be irrelevant since it was the passenger air bag that was responsible for Jesse Magana's injuries.

(CP 3927) (O'Neil Letter at 1) (emphasis added).

It was in that context that O'Neil and Austin then addressed the issue of OSI discovery. O'Neil objected to HMC's responses to the two OSI production requests, No. 21 (concerning seat backs) and No. 22 (concerning air bags), taking issue with what he termed Hyundai's "rewrite" of the requests so they apply "only to people who are injured in a manner identical to Mr. Magana." (CP 3928) (letter at 2). Stating that such a rewrite "is not Hyundai's prerogative," O'Neil insisted the requests "should be answered as written." (Id.)

Austin testified that discussions ensued. See (CP 3707) (Austin Decl. at 5, ¶ 5). O'Neil does not dispute either that those conversations took place, or that they were for the purpose of satisfying the parties' "meet and confer" obligations under CR 26(i). See (CP 4791) (O'Neil Decl. at 2, ¶¶ 3-5). Following up these discussions, Austin sent a letter to O'Neil, on July 11, 2001. (CP 3939-40) (copy of letter, also reproduced as Ex. F of the Appendix to this Opening Brief); see (CP 3708) (Austin Decl. at 5, ¶ 20) (noting last meet and confer telephone conversation took place on July 2). Austin testified the letter was intended to "memorialize . . . the understandings" he and O'Neil had reached. See (CP 3708) (Austin Decl. at 6).

The letter began by stating:

> You identified four areas that you requested we respond to. Each area is discussed below.

(CP 3939) (letter at 1) (emphasis added). Concerning OSI's, the letter stated that Hyundai will "assembl[e] and will produce claims relating to aggressive or violent deployment of the passenger side air bag in the 1995-1997 Hyundai Accent." (Id.) The letter said nothing about Hyundai producing anything relating to seat back failures, or anything about Hyundai producing consumer complaint records.

On August 20, 2001, Austin transmitted the promised air bag OSI production to O'Neil. See (CP 3708) (Austin Decl. at 6, ¶ 21); (CP 3946) (copy of transmittal letter). Hyundai produced documents relating to 19 lawsuits and two demand letters. See (CP 3708) (Austin Decl. at 6, ¶ 21); (CP 3942-44) (chart itemizing the items produced, copy attached as Ex. X to Austin Decl.). Hyundai did not produce any documents relating to seat backs, or any consumer complaint records about air bags. See (CP 3708) (Austin Decl., at 6, ¶ 21).

O'Neil has testified the parties never "arrived at an 'agreement' not to pursue discovery of seatback incidents." (CP 4791) (O'Neil Reply Decl. at 2, ¶ 5). But O'Neil does not dispute that he received Austin's July 11 letter, and also does not dispute that he never contacted Austin or in any other way communicated to Hyundai either that (1) Austin's July 11 letter incorrectly identified the specific discovery plaintiff was requesting, or (2) Austin had omitted areas of discovery that plaintiff wished to continue to pursue. See (CP 3708) (Austin Decl. at 6, ¶ 21); (CP 4791) (O'Neil Reply Decl. at 2, ¶ 5). O'Neil also does not dispute that he never

contacted Austin to suggest that the scope of the August OSI production, confined to air bag lawsuits and attorney demand letters, was in any way inadequate. See id. And while testifying that he wrote "a huge number of letters" on discovery issues between April 2001 and November 2001," see (CP 4791) (O'Neil Decl. at 2, ¶ 5), O'Neil did not offer a single letter controverting the parties' course of conduct concerning OSI discovery, as described by Austin in his declaration, and as reflected in the contemporaneous correspondence describing the air bag OSI production.

D. Fall 2001 Through Spring 2002: The Parties Complete Discovery, and Then Frame the Issues for Trial Through Summary Judgment and Motions in Limine Rulings.

The trial court had no substantive contact with the case through the Fall of 2001. The court set a trial date and granted a default against the Smiths, but heard no motions involving any dispute over the scope of discovery sought either by Magana or Hyundai, or any other matter touching on the substance of Magana's claims. See (CP 15) (default against the Smiths); (CP 32-33) (notice setting trial date of January 21, 2002); (CP 3710) (Austin Decl. at 8, ¶ 23) (noting that Magana filed "a total of three motions to compel all within one month of [the June 2002] trial"). The court's first exposure to the substance of Magana's case against Hyundai came in January 2002, when the court heard argument on Hyundai's motion for partial summary judgment striking any air bag or seat belt design defect claims. See VRP (Jan. 22, 2002) 4:8-12 (Hyundai's opening argument, noting, "this is the first proceeding that we've had before you that really kind of relates to the facts of the case").

Following deposition discovery of Magana's design expert (Stephen Syson) and "occupant kinematics" expert (Dr. Joseph L. Burton), taken in October 2001, Hyundai moved for a partial summary judgment seeking dismissal of any claim of design defect in the air bag or seat belt systems of the 1996 Accent. See (CP 110-11) (Hyundai's partial summary judgment memorandum at 1-2); (CP 84-108) (extracts from the depositions of Burton and Syson, submitted in support of Hyundai's motion). Regarding the air bag claim, Hyundai argued that Dr. Burton's deposition testimony effectively repudiated an opinion set forth in Burton's expert report of August 30, 2001, in which Burton stated that the air bag forced Magana backward with such force that the seat back failed, leading to Magana's ejection from the vehicle. Compare (CP 113-16) (Hyundai's memorandum at 4-7) (quoting from and discussing Burton's deposition) with (CP 80-81) (Burton's August 30, 2001 report at 9-10). Hyundai concluded the deposition testimony established the air bag played no causative role in Magana's ejection from the vehicle, and Hyundai therefore was entitled to partial summary judgment dismissing the air bag defect claim. See (CP 122-23) (Hyundai's summary judgment memorandum at 13-14).

Following briefing, see (CP 187-287) (Magana's response); (CP 306-14) (Hyundai's reply), the trial court heard argument, on January 22, 2002. See VRP (Jan. 22, 2002) 1-54.[8] The trial court ruled

[8]At the outset of the hearing, Hyundai withdrew the seat belt portion of its motion. See VRP (Jan. 22, 2002) 6:24-25 & 7:1-6 (Austin).
(continued . . .)

that Magana would be allowed to present evidence on his air bag theory, as a secondary cause of Magana's injuries:

> . . . the plaintiff's evidence would be that the airbag contributed to the causation factors in the case, that the airbag contributed to pushing the plaintiff backward and is anywhere from a 5 percent factor to a substantial factor in discussing the forces and causation of the accident. . . . So, it appears to me that this is an intertwined system and that we are not able to single out the airbag and eliminate that issue.

VRP (Jan. 22, 2002) 52-53 (court's ruling); see (CP 319-20) (order denying Hyundai's motion for partial summary judgment "striking all claims relating to passenger side airbag").[9]

Trial was then set to commence on June 3, 2002. See (CP 315-16) (amended trial setting notice issued December 20, 2001). Hyundai filed a motion in limine to exclude any OSI evidence offered by Magana that did not satisfy substantial similarity requirements. (CP 452) (Hyundai's motions in limine at 2, Motion No. 1 concerning "other alleged accidents or incidents"). The trial court granted the motion. June 2002 trial VRP [II] 122:3-11. The

---

(. . . continued)
Hyundai did so because of a claim by Magana that the use of "pretensioners" in the seat belts could have prevented "ramping" of Magana, thereby avoiding his ejection, and Hyundai acknowledged that the "pretensioners" claim raised an issue of fact precluding summary judgment on the seat belt claim. Ultimately, Magana withdrew his "pretensioner" theory and did not pursue that claim at trial.

[9]The court did not specifically address Dr. Burton's testimony. Rather, the court found that declaration testimony from Syson, that (1) the air bag contributed "5 to 10 [percent] of the total deformation" of the seat back, and (2) "every 5 [percent] of deformation increases the risk of ejection," was sufficient to create a jury question on proximate cause. See (CP 200) (Syson Decl. at 3, ¶¶ 6-7); VRP (Jan. 22, 2002) 52:21-22 (observing that "[t]here may be more than one proximate cause of an injury or accident").

ruling proved moot; Magana did not even attempt to introduce any of the OSI evidence that Hyundai had produced the previous August.

E. The June 2002 Trial: Magana Introduces Evidence of a New Alternative Seat Belt Design Theory, in Violation of the Scope of His Expert Witness Disclosures. The Trial Court Initially Denies Hyundai's Motion to Strike, but Later Reconsiders. Magana Then Persuades the Court Not to Tell the Jury That the Evidence Has Been Stricken. The Jury (by a 10-2 Vote) Finds Hyundai Liable, and Awards $8,000,000 in Damages.

Magana's principal design defect theory at the June 2002 trial focused on the front passenger seat back of the Hyundai Accent. See Magana, 123 Wn. App. at 318 ("Magana's primary trial theory was that, if the seat back had been more rigid, it would not have given way . . ."). The parties vigorously disputed that issue, as well as the question of whether Magana or Ricky Smith's wife, Angela, was seated in the front seat. See Magana, 123 Wn. App. at 310-11 & 318-19 (describing disputed evidence on both issues).

In September 2001, Magana represented that Syson would serve as Magana's expert witness on design defect issues, while Dr. Burton would serve as Magana's expert on accident "biomechanics" (also known as "occupant kinematics"). See (CP 3957-59) (Magana's supplemental response to HMA's expert witness disclosure interrogatory at 1-3). Dr. Burton's expert witness report, attached as part of the expert witness disclosure, contained no indication that he would offer any opinions on design issues. See (CP 3962-68) (copy of reports). That October, Hyundai took Dr. Burton's deposition. See (CP 3349-87) (Transcript of Burton deposition, Oct. 3, 2001). Dr. Burton testified he would not be offering opinions on design issues:

> Q. You have not been asked to do any design analysis?
>
> A. I don't talk about specifics of design analysis, only about how a particular component part might perform in the production of or prevention of an injury. So I would have declined specifically to do that.

(CP 3353) (Burton deposition at 17:9-15).

Dr. Burton testified at the June 2002 trial During his direct examination of Dr. Burton, Magana's counsel asked about a so-called "integrated" seat belt design. See (CP 3434-35) (June 2002 trial VRP [VII-A] 977-78); see also Magana, 123 Wn. App. at 312 (quoting Burton's testimony). Over Hyundai's objection, Dr. Burton was allowed to testify that "[t]here are many vehicles on the road now that have such designs," and to express an opinion that a working integrated seat belt "would have prevented whomever [sic] was in the front seat from being ejected, most probably" in the crash at issue. (Id.)

Hyundai renewed its objection outside the presence of the jury, moving to strike the testimony as a violation of Magana's expert witness disclosure obligations. See (CP 3440-41) (June 2002 trial VRP [VII-B] 992-93). Magana's counsel responded by asserting Hyundai could not legitimately claim surprise, because Dr. Burton at his deposition gave counsel an article about integrated seat belts, and counsel had an opportunity to examine Burton about it. (CP 3441) (June 2002 trial VRP [VII-B] 993:9-16). Hyundai's counsel responded:

> Your Honor, on page 17 of Dr. Burton's deposition, I specifically asked him "Are you going to offer any opinion about design in this case?" and he said no. And he's consistently testified throughout the history of his testifying that he's not a design expert, not an engineer, not a seat back designer. It's not his area. So the fact

> that it may have been mentioned in some article attached to his deposition is irrelevant.

(CP 3441-43) (June 2002 trial VRP [VII-B] 993:16-994:1).[10]

The trial court denied Hyundai's motion, only to reconsider four days later and strike the testimony. (CP 3447-49) (June 2002 trial VRP [XI] 1666:13-1668:14). Magana's counsel offered no argument defending the introduction of testimony, and made no effort to persuade the trial court not to strike the testimony. But when Hyundai's counsel asked the trial court, at the close of evidence, to instruct the jury that the testimony had been stricken, Magana's counsel persuaded the trial court not to, because doing so would -- in counsel's words -- "kind of highlight it[.]" See (CP 3453-55) (June 2002 trial VRP [XV] 2275:21-2277:17) (statement by Mr. Paul Whelan objecting to the requested instruction).

The jury returned a verdict in favor of Magana, and awarded him $8,064,052 in damages. (CP 694-96) (Special Verdict Form). The jury resolved both the design defect and "who sat where?" issues in favor of Magana by the minimum required 10-2 vote. See Magana, 123 Wn. App. at 313 (noting vote split); VRP (June 24, 2002) 2448:25-2452:15. Defendant Ricky Smith's negligence was found to be another proximate cause of

---

[10]Dr. Burton brought several documents to the deposition, one of which was an article related to "integrated seat belts." See (CP 3376-77) (Burton deposition at 109:11-110:3). Mr. Vanderford asked Dr. Burton questions about the documents, including questions concerning the integrated seat belt article. See (CP 3376-78) (Burton deposition at 109:11-116:12). But Dr. Burton never indicated he was prepared to offer an opinion regarding whether integrated seat belts were a feasible alternative design that would have prevented Mr. Magana's ejection. See (CP 3349-87) (Burton deposition transcript).

Magana's injuries, and the jury allocated responsibility 60 percent to Hyundai and 40 percent to Smith. (CP 695-96) (Answers to Questions Nos. 3 & 5).

F. July 2004: This Court Holds the Trial Court's Failure to Instruct the Jury That the Improper Burton Alternative Seat Belt Design Testimony Had Been Stricken Deprived Hyundai of a Fair Trial. This Court Reverses the Judgment and Remands for Retrial on Liability.

Hyundai appealed and raised several issues, including the trial court's refusal to instruct the jury that the Burton integrated seat belt testimony had been stricken. Magana claimed Hyundai had waived that issue by waiting to request the instruction at the close of the evidence, and that any error in failing to instruct the jury was harmless. See (CP 3470-77) (Magana's Brief of Respondent in Cause No. 29347-1-II, at 10-17).

On July 24, 2004, this Court issued its decision reversing the judgment against Hyundai and remanding for new trial. See (CP 3519-33) (published portion of this Court's slip opinion addressing the Burton issue) reported at 123 Wn. App. at 308-20 (as amended on denial of reconsideration); (CP 3545) (slip opinion at 27). This Court found no waiver in the fact that both Hyundai's counsel and the trial court forgot to have the jury instructed about the striking of the Burton testimony, at the precise moment when counsel and the court had initially agreed the jury should be given that instruction. See 123 Wn. App. at 314-15. Concluding that "[c]learly, the jury could not follow the [trial] court's instruction to disregard stricken evidence when the court failed to advise the jury that it struck that portion of Burton's testimony that it had earlier admitted over Hyundai's objection[,]" this Court found the trial court abused its discretion when it rejected Hyundai's requested instruction,

because the absence of that instruction misled the jury as to what evidence was properly before it. See id. at 316 (citations omitted) (emphasis added).[11] After a comprehensive examination of the record, this Court concluded that the error could not be deemed harmless because there was "at least a substantial possibility that [it] . . . affected the verdict." 123 Wn. App. at 319 (footnote omitted).[12]

This Court affirmed the judgment against the Smiths in the unpublished portion of its decision. (CP 3545) (slip opinion at 27). After receiving supplemental briefing from the parties, this Court limited the scope of retrial to liability issues regarding the Accent's occupant restraint system. See 123 Wn. App. at 319 (footnote omitted) (as amended on denial of reconsideration); (CP 3577) (order directing additional briefing); (CP 3592) (order amending opinion).

G. Spring 2005: Following the Issuance of the Mandate, the Trial Court Sets a Retrial Commencement Date of January 17, 2006. Fall 2005: Magana Rejects Hyundai's Update of Its Responses to Seat back OSI Discovery Requests, and Successfully Moves to Compel Production of Additional Documents, Including Consumer "1-800 Hotline" Computer Database Records.

Magana moved for reconsideration, which was denied by an order entered on February 24, 2005. See Order on Motion for Reconsideration,

---

[11]The transcript of oral argument underscores that this Court had no difficulty concluding that the trial court had been persuaded, by Magana's counsel's successful objection, to commit a clear error of law. See (CP 3501-02) (VRP of the oral argument in Cause No. 29347-1-II, Feb. 24, 2004, at 21-22) (comments of Judge Seinfeld).

[12]In the unpublished portion of the decision, this Court rejected the balance of Hyundai's assignments of error. See (CP 3533-42) (slip opinion at 15-24).

Cause No. 29347-1-II (on file). Magana did not petition for Supreme Court review, and this Court's mandate issued on March 29, 2005. See (CP 716-747) (mandate).[13] The parties then asked the trial court to set a retrial date. See (CP 4022) (letter from Magana's counsel, requesting setting). That May, the trial court set retrial to commence on Tuesday, January 17, 2006. (CP 4024) (trial setting notice).

In September, Magana's counsel (O'Neil) wrote to Jeff Austin requesting an "update" of Hyundai's responses to several discovery requests:

- Regarding Interrogatory No. 12 (No. 11 in the later requests directed to HMC), concerning identification of Hyundai vehicles that use the same or substantially similar front seat as the 1996 Accent, O'Neil claimed to have found "a recliner mechanism from another Hyundai vehicle that looks identical" to that used in the 1996 Accent. See (CP 4032) (letter from O'Neil to Austin, dated September 13, 2005 at 1). O'Neil requested an update to account for what he asserted to be a discrepancy between Hyundai's discovery response and the evidence of similar seat recliner mechanisms. See id.

- Regarding RFP No. 20,[14] seeking documents relating to complaints, notices, claims, lawsuits or incidents of alleged seat back failure, O'Neil again raised the issue of the similar recliner mechanism, as

[13]An amended mandate, clarifying which appellants had been awarded costs, was issued April 4, 2005. See (CP 748-749) (copy of amended mandate).

[14]O'Neil referred to "Interrogatory" No. 20, but there is no dispute that he intended to refer to Request for Production No. 20.

well as the passage of time since Hyundai's last responses. See (CP 4032-33) (letter at 1-2). No update, however, was requested either to Hyundai's response to Request for Production No. 21 concerning air bag OSI's, or to the air bag OSI production provided under the terms of the parties' Summer 2001 discovery agreement.

Following the requisite meet and confer telephone conference, Hyundai responded in writing, as follows:

- Regarding models with the same or substantially similar front seats as the 1996 Accent: Hyundai did not agree that the use in the 1995-1999 Elantra of a substantially similar recliner mechanism meant those Elantras used a substantially similar front seat, which was the actual subject of the discovery request. See (CP 4050) (letter from Austin to O'Neil dated Oct. 11, 2005, at 1). Nonetheless, Hyundai agreed to produce lawsuits or claims involving seat back deformation issues, relating to the 1995-1999 Elantra year models. See id.

- Regarding RFP No. 20: Hyundai continued to object to the full scope of the request as overly broad, unduly burdensome and not reasonably calculated to lead to discovery of admissible evidence. See (CP 4050-51) (letter from Austin to O'Neil, noting and reasserting prior objections). Hyundai made clear it would update its response to this request only to the extent of any lawsuits or claims involving seat back deformation issues, either for the Accent or the Elantra 1995-1999 model years. See (CP 4050-51) (letter at 1-2).

On October 25, Hyundai turned over documents pertaining to two alleged seat back failures: (1) a lawsuit filed in July 2002, alleging a seat back failure involving a 1999 Hyundai Accent (the Bobbit lawsuit); (2) correspondence from an attorney dating from September 2000, alleging a seat back failure in a 1995 Elantra for which no lawsuit was ever filed (the Dowling claim). See (CP 4053) (letter from Austin to O'Neil, dated October 25); (CP 4062-64) (supplemental written responses to Interrogatory No. 12 and Request for Production No. 20); (CP 4054-60) (documents relating to the two claims). Magana then moved to compel. See (CP 787-830) (motion to compel). Magana demanded -- with retrial set to commence in less than three months -- production of all documents relating to the full range of "complaints," "notices," "claims," "lawsuits" and "incidents," concerning alleged seat back failures for all Hyundai vehicles, going back to 1980. See (CP 788-89, 792) (Motion to Compel at 2-3 & 6); see also (CP 784-86) (Syson Decl. supporting motion).

Hyundai opposed, challenging the lack of substantial similarity because of the unique circumstances of Magana's accident, and urging the trial court to deny the request as unduly burdensome and not reasonably calculated to lead to discovery of admissible evidence. See (CP 912-16) (Hyundai's Opposition Memorandum at 4-8); (CP 889-90) (Blaisdell Decl. at 1-2). Magana's reply emphasized the distinction between the test for substantial similarity for purposes of allowing discovery, from the test for substantial similarly for purposes of admissibility at trial, insisting that the

former, far more forgiving test mandated granting the motion. See (CP 938) (reply at 2).

The trial court ruled that Hyundai was to produce "complaints and claims regardless of model year [or] ... date of accident" involving allegations of seat back failure in Hyundai vehicles with single recliner seats. See VRP (Nov. 7, 2005) 17:12-16 (colloquy between the court and Mr. Austin).[15] An issue then arose over whether "complaints" meant lawsuits or extended to "consumer" complaints, in which case Hyundai would be obligated to search its consumer 1-800 hotline computer record database as well as its lawsuit records. See (CP 964-78) (correspondence, including proposed form of orders). The court supplemented its original ruling by entering an order on November 18, directing Hyundai to include documents relating to consumer complaints as well as legal claims. See (CP 961-62) (court's order, with handwritten interlineations).

H. November-December 2005: Hyundai Complies With the Trial Court's Production Order. Magana Then Moves for a Default. Claiming Hyundai Violated Its Discovery Obligations by Failing to Produce the Seat Back OSI Documents Before the First Trial.

Hyundai promptly began the processes necessary for compliance with the trial court's production order. Based on its initial understanding of the scope of the court's ruling, Hyundai had begun gathering documents relating to lawsuits or claims alleging seat back failures on Hyundai vehicles with single recliner seats. See (CP 1026) (Cavanaugh Decl. at 1,

[15]During the hearing on the motion, Magana clarified that the relief sought would be limited to vehicles with seats using single recliner mechanisms. See VRP (Nov. 7, 2005) 12:21-23.

¶ 2).[16] After the court clarified the scope of its ruling and directed the production of consumer complaint records as well, Hyundai expanded the scope of its efforts to address retrieval of records from its consumer "hotline" computer record database.[17] On November 21, 2005, Hyundai produced records concerning lawsuits and claims (demand letters), all of which involved models other than the Accent and Elantra. See (CP 1027) (Cavanaugh Decl. at 2, ¶ 3); (CP 2353-54) (O'Neil Decl. at 3-4, ¶ 26).[18]

---

[16]This supplemental production would precisely match the scope of the air bag OSI production by Hyundai in the Summer of 2001. See § II.C, supra, at 16-18 (discussing agreement and ensuing air bag OSI production); (CP 3939) (Austin letter of July 11, 2001, at 1); (CP 3708) (Austin Decl. at 6, ¶ 21); (CP 3942-44) (chart itemizing air bag OSI documents produced).

[17]Producing consumer hotline records involved a two step process. First, HMA's computer information systems staff needed to develop a search strategy to assure recovery of all responsive records. (CP 1029) (Dowd Decl. at 2, ¶ 3); (CP 5659-60) (Eastman Decl. at 1-2, ¶ 2). Ultimately, to assure full compliance and avoid omitting potentially responsive records, the simple search term "seat" was employed, which generated, from a base of nearly 1,000,000 records, some 5,000 records, which then had to be reviewed page by page (some 10,000 pages) to cull out records actually involving allegations of seat back failure. (CP 5660) (Eastman Decl. at 2, ¶ 3). Second, the information systems staff had to reconstruct software needed to restore access to the older complaint records, which had been stored on backup disks after a computer conversion initiated in 1999 (before Magana filed his lawsuit). See (CP 1028-30) (Dowd Decl. at 1-3, ¶¶ 2-8); (CP 1721-22) (Supp. Dowd Decl.). The reconstruction was successful, and all responsive records were produced by January 5, 2005. See (CP 3303) (Vanderford Decl. at 6, ¶ 2); Ex. 44 (letter from Hyundai counsel Heather Cavanaugh, dated Jan. 5, 2006, at 2).

[18]O'Neil's declaration refers to these matters as "incidents," but a comparison of the matters listed in a chart set forth in his declaration with the exhibits introduced for the same matters at the evidentiary hearing discloses that every one of the listed items involved a lawsuit or a demand letter. Compare (CP 2354) (O'Neil Decl. at 4) (chart) with Exs. 11-22, 24, 26 & 29.

On December 1, Hyundai supplemented the production with several banker's boxes of police reports, photographs, expert records, and deposition transcripts, and also produced the first set of records generated from the search of the consumer "hotline" computer records database. See (CP 1027) (Cavanaugh Decl. at 2, ¶ 3 & 5).

Magana's counsel now faced a dilemma. Magana had successfully argued that Hyundai should be compelled to produce seat back OSI materials, including consumer hotline records. In doing so, Magana expressly acknowledged the material distinction between the test for discovery of OSI materials, as opposed to the test for the ultimate admissibility of such materials at trial. See, e.g., (CP 794-95) (Motion to Compel at 8-9) (stating that "[a] party has a right to discover incidents occurring in similar products, even if those incidents occurred under different circumstances"); VRP (Nov. 7, 2005) 4:20-25 (argument by Magana's counsel) ("We are not talking about admissibility. We're merely talking about discovery which is reasonably calculated to lead to the discovery of admissible evidence" (emphasis added)).

But with the OSI discovery materials in hand, the focus necessarily shifted to whether any of these materials could actually be admitted at trial. Magana's design defect expert, Stephen Syson, had submitted a declaration supporting Magana's motion to compel, testifying about the similarity of seat strength measurements and recliner mechanisms. See (CP 785-86) (Syson Decl. at 2-3, ¶¶ 8 & 11). Syson now reviewed a portion of Hyundai's OSI production. (CP 2665) (Supp. Syson Decl. at 3,

¶ 10). Although Syson insisted that the new material "would have been invaluable the first time I testified in this case[,]" Syson acknowledged that "it would be useful to have more information about each of the incidents" and that the "shortage of time" before the start of the trial would make it "difficult to reconstruct the collisions [i.e., the accidents described in the OSI materials] to determine if the forces on the seats would be similar to or greater than the forces involved in Jesse . . . [Magana's] crash." See (CP 2665-66) (Syson Decl. at 3-4, ¶¶ 11-12 & 14).

Dr. Burton, Magana's occupant kinematics expert, shared Syson's concerns. While asserting that a "quick review" of the documents produced by Hyundai showed "th[ey] . . . would have been extremely useful in supporting my opinions had the[y] . . . been received prior to the first trial[,]" Dr. Burton acknowledged that "to properly lay a foundation" he "would need to spend considerable time reviewing the documents and determining similarities between the incidents described . . . and the Magana crash[,]" and concluded that "the work will be difficult if not impossible," given the time remaining before the start of the Magana trial. See (CP 2669-2770) (Burton Decl. at 3-4, ¶¶ 10-11 & 14).

Magana could have sought a continuance from the trial court, grounded in Magana's inability to develop the OSI material for admission into evidence, given the insufficient time remaining before the scheduled commencement of trial on January 17, 2006. Instead, on the eve of Christmas Eve (Friday, December 23, 2005), Magana moved to strike

Hyundai's answer and enter a default judgment in the amount of the original verdict.[19]

Hyundai's response to the OSI discovery requests (and especially Request for Production No. 20) lay at the heart of Magana's default demand. Magana described Hyundai's responses and Mr. O'Neil's insistence (in his April 26, 2001 letter to Jeff Austin) that the requests should be "answered as written." See (CP 2312) (Memorandum at 4). Magana then stated:

> Hyundai never amended its responses to these requests prior to the first trial in June 2002. Plaintiff relied upon the verifications of Hyundai and its counsel that the responses were formed after reasonable inquiry and were consistent with the civil rules, and were true and correct according to the files of HMA and HMC.

(CP 2313) (Memorandum at 5). Magana said nothing about: (1) the subsequent "meet and confer" telephone conferences between O'Neil and Austin; (2) Austin's July 11, 2001 letter describing the scope of the OSI production to be provided by Hyundai; or (3) the course of that production and Magana's response to it.[20]

---

[19]Magana's initial motion submissions, along with Hyundai's opposition and Magana's reply, are listed on the trial court's Findings and Conclusions. See (CP 5312-14) (Findings & Conclusions at 2-4). To assist the Court, Hyundai has prepared a chart listing the same documents with the parallel Clerk's Papers page numbers. That chart is attached as Exhibit C of the Appendix to this Brief.

[20]Magana represented HMA'S "last word" as its initial response to RFP No. 20. See (CP 2313) (Memorandum at 5). In fact, HMA's response was followed by the parties' agreement of July 2001, which took seat back OSI off the discovery table, where it remained through the June 2002 trial until Magana put it back on the table in the Fall of 2005. Magana also asserted that HMC's response, when read together with HMA's, "impl[ied] . . . HMC was not aware of any other incidents of (continued . . .)

Magana claimed to have been prejudiced by Hyundai's seat back OSI production in two ways. First, Magana claimed he was prejudiced at the June 2002 trial because he did not have the OSI materials that predated the June 2002 trial.[21] Second, Magana claimed he was prejudiced in his preparation for the retrial because he lacked the time required to determine whether any of the recently produced seat back OSI's could be admitted into evidence. See (CP 2331-35) (Memorandum at 23-27). According to Magana's OSI expert, Mr. Lawrence Baron, the process of establishing whether any of the other incidents "are, indeed, similar" could take upwards of one year, and certainly could not be completed in the few weeks remaining before the scheduled start of Magana's retrial on January 17, 2006. See (CP 2648-49) (Baron Decl. at 3-4, ¶¶ 6-10).[22]

(. . . continued)
seatback failure." See (CP 2313) (Memorandum at 5). But HMC's response only stated there had been no personal injury or fatality lawsuits or demand letters involving claims of defective design of the front passenger seats and air bag systems for 1995-1999 Accents, in which the air bag allegedly knocked a person back while collapsing the front passenger seat. See (CP 2312) (Memorandum at 4) (quoting HMC's response).

[21]Precisely how access to the seat back OSI's would have changed the course of the trial was never made clear, beyond a suggestion at the hearing on whether to have an evidentiary hearing, that the jury would for some (unexplained) reason have responded to this new evidence bearing on design defect by increasing its damages award, from $8,000,000 to between $12,000,000 and $13,000,000. See VRP (Jan. 13, 2006) 55:23-56:9 (argument of Mike Withey, counsel for Magana).

[22]Magana also asserted spoliation of evidence, based on Hyundai's then current expression of concern as to whether the oldest consumer hotline records might prove unrecoverable from backup disks. See (CP 2320-21) (Memorandum at 12-13). That assertion would be mooted by the ensuing recovery of all responsive consumer hotline records.

Besides asserting Hyundai violated its discovery obligations pertaining to Request for Production No. 20, Magana claimed Hyundai committed the following additional violations:

- Interrogatory No. 12 and the Elantra recliner mechanism. Magana stated that Hyundai's admission that the Elantra had a substantially similar recliner mechanism meant Hyundai's response to Interrogatory No. 12, stating that no Hyundai model had the same or a substantially similar front right seat as the 1996 Hyundai Accent, was false and misleading when given. See (CP 2318) (Memorandum at 10).

- Documents pertaining to the ACEVEDO case. Magana stated that after being ordered to produce documents pertaining to seat back failure lawsuits, Hyundai failed to produce documents pertaining to Acevedo v. Hyundai Motor Co., a New Jersey lawsuit involving a seat back failure claim. See (CP 2311) (Memorandum at 3); (CP 2369-72) (extracts from settlement memorandum in Acevedo, attached as Ex. 2 to O'Neil Decl.).

- Failure to disclose a "sled" test. Magana stated that Hyundai failed to disclose a "sled" test that should have been produced in response to discovery requests prior to the first trial. See (CP 2321-23) (Memorandum at 13-15).

Magana rejected a continuance, on the grounds that he had been deprived of justice for too long. See (CP 2343-44) (Memorandum at 35-36). Magana demanded the ultimate sanction of striking Hyundai's answer, and entering a default judgment in the amount of the original verdict. See (CP 2343-45) (Memorandum at 35-37).

I. Hyundai Shows That the Issue of Seat Back OSI Documents Was Resolved by Agreement of Counsel in the Summer of 2001. Magana Then Changes His Theory of the Case, and -- on the Eve of an Evidentiary Hearing on the Sanctions Issue -- Asserts Hyundai Willfully Misled Magana's Counsel, by Falsely Claiming to Have No Accent Seat Back "Claims" When Hyundai First Responded to Magana's OSI Discovery Requests.

Served with Magana's sanctions papers on Friday, December 23, 2005, Hyundai complied with its obligations under the Clark County rules to serve and file its answering papers and declarations by January 6, 2006. Picking up the discovery narrative where Magana's motion left off, Hyundai outlined the facts and circumstances evidencing that the parties resolved OSI discovery issues by an agreement relieving Hyundai of the obligation to produce any seat back OSI's. See (CP 3206, 3214-15 & 3242-44) (Hyundai's answering memorandum at 1, 9-10 & 37-39). The fact of the agreement, Hyundai argued, conclusively refuted any suggestion that Hyundai willfully violated its seat back OSI document production obligations. See (CP 3242-44) (answering memorandum at 37-39).

As for prejudice: Hyundai pointed out that the same circumstances preventing resolution of the admissibility of the OSI materials in time for a January 2006 retrial also prevented anyone from determining whether Magana had been prejudiced by any "late" production. David Swartling, Hyundai's OSI expert, explained:

> I have reviewed the declarations submitted with plaintiff's motion for sanctions, focusing on those that state or imply that information regarding seat backs in other vehicles provided by Hyundai is of great value to plaintiff as proof of other similar incidents. In my opinion, such conclusions are speculative and premature at this time. I agree with the statements that it would require substantial time and effort for plaintiff's counsel to investigate, conduct discovery, and marshal facts with respect to other incidents in

> order to evaluate their potential admissibility. In my opinion, these statements tacitly acknowledge that the ultimate admissibility and hence the impact of alleged OSI's remain to be determined following the lengthy process described above.

(CP 3267) (Swartling Decl. at 6, ¶ 13) (emphasis added).[23]

Regarding the other claimed discovery violations, Hyundai responded as follows:

- Interrogatory No. 12 and the Elantra recliner. Pointing out that Hyundai had not admitted any similarity of the Elantra recliner mechanism made the Elantra front seat similar to the Accent's front seat (CP 3246-47) (answering memorandum at 41-42), Hyundai submitted the testimony of William Stewart, HMA Director of Engineering and Design Analysis, who explained why the seat of the Elantra could not, in fact, be equated with the seat of the Accent. See (CP 3271-97) (Stewart Decl., with exhibits).

- The ACEVEDO case. Hyundai acknowledged that documents concerning the Acevedo case should have been produced. See (CP 3247-48) (answering memorandum at 42-43). Tom Vanderford submitted a declaration in which he took responsibility for the error, explaining that he mistakenly recollected Acevedo as a seat belt and not a seat back case. See (CP 3303-05) (Vanderford Decl. at 6-8, ¶¶ D.1-D.5). The reasonability of this mistake was confirmed by the web site of the

[23] "[T]he lengthy process" described by Swartling, in paragraphs 7-9 of his declaration (CP 3264-66), was substantively identical to the process described by Lawrence Baron, Magana's OSI expert, in paragraphs 5-10 (CP 2648-49) of his declaration submitted in support of Magana's sanctions motion.

Acevedo plaintiff's lawyers, who also described the matter as a seat belt case. (CP 3415) (copy of web page description dated 01/05/06, copy attached as Ex. J to Vanderford Decl.).

- The sled test. Hyundai acknowledged it missed one sled test, when Hyundai produced a multitude of test results prior to the June 2002 trial. See (CP 3245) (answering memorandum at 40). Hyundai put into evidence the full record of its test production, showing it made available over 13,000 pages of test reports and some 100 test videotapes. See (CP 3301-02) (Vanderford Decl. at 4-5, ¶¶ B.1-B.3). Hyundai also submitted the testimony of David Blaisdell to establish that Hyundai, if anyone, was prejudiced by the unavailability of the missing sled test at the first trial. See (CP 3420-21) (Blaisdell Decl. at 1-2, ¶¶ 2-4).[24]

Magana then changed his theory of the case. In his reply filed on Wednesday, January 11, 2006, Magana asserted HMA's April 2000 response to RFP No. 20 was misleading, because Hyundai had consumer hotline records alleging seat back failures in 1995-1999 Accent model year vehicles at the time HMA stated there had been no personal injury lawsuits or claims alleging seat back failures, for any of those Accent

[24]Hyundai also responded to one other issue raised by Magana -- the charge that Hyundai counsel, Tom Vanderford, had misled the trial court about the "surprise" nature of Dr. Burton's alternative seat belt design testimony. See (CP 2323-25) (Magana's Memorandum at 13-15). Hyundai's response, using deposition and trial transcripts and related materials, confirmed Magana's counsel violated their expert opinion discovery obligations when they introduced Burton's alternative seat belt design testimony. (CP 3217-20) (Hyundai's Opposition Memorandum at 12-15). Magana had abandoned this issue by the time of the evidentiary hearing, and the trial court made no finding concerning it.

model years. See (CP 4853-54) (Reply Memorandum at 4-5). The evidentiary cornerstone for the new theory consisted of three consumer complaints: (1) "Salazar," (2) "Martinez," and (3) "McQuary." See id.; see also (CP 4792-93) (O'Neil Reply Decl. at 3-4, ¶ 10). Magana asserted that these three records, alleging seat back failures for 1995-1999 Accent model years, and generated before Hyundai's initial Spring 2000 response to RFP No. 20,[25] proved that response to have been misleading. See (CP 4855-57 & 4862) (Reply Memorandum at 6-8 & 13).

Even then, Magana did not assert what would become the analytical cornerstone for his new theory. Not until Friday, January 13, at the hearing on whether to have an evidentiary hearing, did Magana suggest that Hyundai's use of the term "claim" had misled Magana's counsel into believing Hyundai had no documents pertaining to alleged Accent seat back failures. VRP (Jan. 13, 2006) 14:15-23 (argument of Magana counsel Mike Withey).

---

[25]There is no dispute that these three records were the subject of Hyundai's final production of consumer hotline records on January 5, 2006, which had been delayed pending Hyundai's resolution of backup disk retrieval issues. Martinez involved a 1995 Accent (Ex. 31 at 1, "VIN" number listing KMHVF, "Model" listing "Accent (X3) 1995") and McQuary a 1997 Accent (Ex. 32 at 1, "VIN" number listing KMHVD, "Model" listing "Accent (X3) 1997"). (Extracts from Exhibits 31 and 32 are attached as Exhibits G and H, respectively, of the Appendix to this Brief.) Although Salazar (Ex. 30) was initially identified as involving an Accent based on the "Model" listing, the VIN number prefix turned out to be for a non-Accent vehicle, and the VIN number should be treated as dispositive. See Ex. 3 (Johnson Dep. Transcript at miniscript pages 21:16-23:7 & 51:19-52:7); see also (CP 5316) (Finding of Fact No. 14) (treating Martinez and McQuary as involving Accents, while noting only the reference to an Accent on the Salazar claim document). Thus, in actuality, there were only two records involving Accents for model years 1995 through 1999, predating the Spring 2000 response to RFP No. 20.

J. After a Limited Evidentiary Hearing, the Trial Court Finds Hyundai Willfully Violated Its Discovery Obligations and That Those Violations Materially Prejudiced Magana, and Orders a Default.

On January 4, 2006, Magana moved for an evidentiary hearing on his sanctions motion, to be held Friday, January 13, 2006. (CP 3171) (Motion at 1). Ultimately, the trial court heard argument on January 13 on whether to have an evidentiary hearing. See VRP (Jan. 13, 2006) 1:1-13 (comments of the court concerning the limited scope of the day's calendar).[26] The court granted Magana's request for an evidentiary hearing, which the court set to begin the following Tuesday, January 17 (the day following the Martin Luther King Birthday court holiday). VRP (Jan. 13, 2006) 72:15-17 (court's ruling). The grant was "limited," however, with "primar[y]" reliance to be placed on affidavits and other evidentiary submissions already on file. See VRP (Jan. 13, 2006) 72:16-18 & 74:16-23.[27]

---

[26]The court also heard Hyundai's motion for a continuance. Hyundai argued for a continuance on two grounds: (1) co-trial counsel Tom Bullion could not participate because of serious medical complications faced by his newborn twin sons; and (2) the case simply could not be ready for trial starting January 17, given the huge backlog of unresolved motions in limine and other matters. See (CP 4356-57) (Bullion Continuance Decl.); VRP (Jan. 13, 2006) 66:4-67:3 (counsel's argument, noting "miscalculat[ion of] the breadth of issues on retrial"); see also Ex. D to the Appendix of this Brief (inventory of pending motions at the time the trial court ordered a default). Magana opposed any continuance, and the trial court denied Hyundai's motion. See VRP (Jan. 13, 2006) 67:8-69:20 (Magana's argument in opposition, 70:7-16) (ruling denying continuance).

[27]The trial court made one substantive ruling relating to the scope of Magana's sanctions motion, rejecting Magana's attempt to reopen the issue of whether any discovery violations prejudiced Magana at the June (continued . . .)

The evidentiary hearing proceeded over two days, beginning the morning of Tuesday, January 17 and ending the afternoon of Wednesday, January 18. See VRP (Jan. 17, 2006); VRP (Jan. 18, 2006). Hyundai will highlight three areas of the testimony:

- The interplay between the obligations to seek a protective order, and to meet and confer before doing so. The declaration of Magana's discovery obligations expert, Thomas Greenan, had not addressed the impact of an OSI production agreement on Hyundai's discovery obligations. See (CP 2655-62) (Greenan Decl.). During cross-examination, Greenan admitted that, if there is a CR 26(i) discovery conference followed by an agreement of counsel as to what is to be produced, "there isn't sanctionable activity" merely because the responding party had earlier presumed to limit the scope of an initial response to a production request. See VRP (Jan. 17, 2006) 62, 11. 18-22.[28] David Swartling, Hyundai's OSI expert examined by

---

(. . . continued)
2002 trial. See VRP (Jan. 13, 2006) 73:5-74:15. Magana made no further attempt to prove prejudice at the first trial, and the trial court made no finding that any discovery violation found to have been committed by Hyundai had prejudiced Magana at the first trial.

[28]Greenan insisted that Mr. Austin's July 11, 2001 letter had to state expressly that Magana's counsel was "withdrawing your claims on seat backs" to constitute what Greenan called a "complete agreement on discovery" under CR 26(i). See VRP (Jan. 17, 2006) 70:17-24. Greenan pointed to no authority supporting his assertion that such an express statement was a precondition to Hyundai's right to rely on the fact of entry into a CR 26(i) agreement governing the scope of OSI discovery. Swartling testified that the degree of specificity in that respect depends upon the circumstances of the individual case. See VRP (Jan. 18, 2006) 32:12-23.

Magana's counsel on the discovery obligations issue, agreed that Hyundai's OSI production obligations could be altered by an agreement governing the scope of production, and that such an agreement would obviate the need for Hyundai to seek a protective order from the trial court. See VRP (Jan. 18, 2006) 50:22-51:5 (examination by Magana's counsel); VRP (Jan. 18, 2006) 54:1-55:9 (cross-examination by Hyundai's counsel).

- The meaning of "claim." The testimony of several witnesses bore on this issue:

Thomas Greenan, Magana's discovery expert, stated that production of consumer hotline records was called for by Request for Production No. 20's use of the term "incidents":

> Q. [Cross-examination by Mr. Runyan, counsel for Magana] It is clear, based on the response to request for production, that HMA was limiting its response to personal injury or fatality lawsuits or claims; correct?
>
> A. That's the way that HMA limited its answer, yes?
>
> Q. And there's nothing there that talks about consumer claims or consumer complaints; is there?
>
> A. No, but there certainly is in the request for production.
>
> Q. What in the request for production asks for consumer claims?
>
> A. Incidents of alleged seat back failures.

VRP (Jan. 17, 2000) 66:16-67:1 (emphasis added).

Steve Johnson, Hyundai's designated 30(b)(6) representative on the subject of other incidents of injuries allegedly caused by rearward seat back deformation, was questioned about the definition of "claim" during his

deposition taken the week before the evidentiary hearing. Mr. Johnson defined a "claim" as when a customer "sends in . . . additional information" in response to a "document request package[,]" noting that such information would typically be reviewed by an attorney. See Ex. 3 (Johnson Dep., Jan. 10, 2006, at miniscript p. 34:23-35:1). But Johnson did not agree with the attempt by Magana's counsel to equate this definition of claim to the definition that may have applied when others at Hyundai, working with outside counsel, endeavored to answer Magana's RFP No. 20. See Ex. 3 (Johnson Dep., Jan. 10, 2006 at miniscript p. 52:22-56:9).

David Swartling, Hyundai's OSI expert, defined a "claim" (in the context of a claim against an automobile manufacturer) as:

> . . . a particular . . . articulation of a problem, and -- coupled with a demand for a particular remedy. So I see that claim being kind of further down the stream then merely a complaint.
>
> Most of -- most complaints, at least in my experience, from auto manufacturers are resolved and nothing ever happens to them. Later on they can turn into a claim, and then a claim can turn into a complaint or a lawsuit.

VRP (Jan. 18, 2006) 48:12-25. Swartling resisted Magana's counsel's attempt to characterize the Martinez consumer hotline records as constituting a "claim" merely because the records referred to the fact of medical bills, absent an actual request for reimbursement of those expenses by Hyundai. See VRP (Jan. 18, 2006) 44:5-12 (referring to the copy of the Martinez complaint then marked as Ex. 5 and later also admitted as Exhibit 31).[29]

---

[29]In fact, the Martinez complaint contained no such request, as (continued . . .)

Lawrence Baron, Magana's OSI expert, testified he would expect consumer hotline records to be produced in response to a request for "claims." See VRP (Jan. 17, 2006) 183:18-22. Baron defined a claim as, "[i]f somebody calls in and says that they're making a claim or asking for payment of medical bills or asking that their vehicle be fixed," and further testified there would not be a claim if someone "just call[s] to give information to the manufacturer about the fact that they've been involved in an accident." See VRP (Jan. 17, 2006) 184:7-13.[30]

- Prejudice. Consistent with their declarations, both Magana's and Hyundai's OSI experts testified that the process required to determine admissibility of seat back OSI discovery materials produced by Hyundai in December 2005 could not be completed in time for a January 2006 retrial. See VRP (Jan. 17, 2006) 157:17-159:14 (Baron); VRP (Jan. 18, 2006) 79:5-7 (Swartling) (testifying to a time period of "a number of months" up to "as long as a year" to complete the OSI admissibility process). Magana now asserted the delay in production between when (according to Magana) Hyundai should have disclosed the existence of responsive consumer complaint documents, and when the documents were produced pursuant to

---

(. . . continued)
Hyundai will address more fully when it analyzes the trial court's finding that the Martinez hotline records did constitute a "claim." See § IV.A.1.b, infra, at 63 (discussing, inter alia, FOF No. 40).

[30]Baron also testified that, if someone "call[ed] in and they complain[ed] that the dealer has not been giving them the kind of service that they like[,] then "you could characterize that as a claim of a different sort." See VRP (Jan. 17, 2006) 184:14-18 (emphasis added). Baron did not elaborate on what he meant by "a different sort."

the trial court's order to compel, had cost him the chance to establish the substantial similarity required for admissibility.

Baron testified generally on this point, but did not tie his testimony to any of the specific records at issue. See VRP (Jan. 17, 2006) 136:17-143:3.[31] The only evidence Magana offered, to show actual adverse impact on his ability to establish substantial similarity of the specific OSI's produced by Hyundai, consisted of (1) his own testimony describing his difficulties in reaching some of the complainants listed on some of the OSI's, see VRP (Jan. 17, 2006) 90:2-94:14; Ex. 1 (list of phone calls made by Magana); and (2) the testimony of Nikki Holcomb, whose consumer complaint file was introduced into evidence as Exhibit 27 and who is a local area resident. See VRP (Jan. 17, 2006) 98:3-111:16 (examination by counsel for Magana and Hyundai). Magana offered no evidence of any search beyond his efforts to contact persons through the telephone numbers lasted on the raw OSI materials produced by Hyundai, and the contact made with Ms. Holcomb.

Immediately following the close of the evidence, the court ruled before closing argument that Hyundai's answer to Request for Production No. 20 "was not correct." VRP (Jan. 18, 2006) 153:15. After closing arguments the next day, the court took the matter under advisement to the following morning, see VRP (Jan. 19, 2006) 114:15-115:1, at which time the court granted Magana's request for a default. See VRP (Jan. 20, 2006)

[31]Baron referred to two specific OSI's, but in both cases he assumed that delayed production would prevent Magana's counsel from establishing substantial similarity. See VRP (Jan. 17, 2006) 142:5-143:3.

32:12-20. The court found Hyundai willfully violated its discovery obligations pertaining to Magana's requests for production of OSI materials, found that violation had materially prejudiced Magana, and concluded that no sanction short of a default would be adequate to redress his injury. See VRP (Jan. 20, 2006) 20:13-32:20.

K. The Trial Court Refuses to Reconsider Its Sanctions Determinations.

Magana's counsel prepared written findings and conclusions. See (CP 5048-73) (proposed findings and conclusions). Magana also moved for an award of prejudgment interest, from the date of the June 2002 jury verdict. See (CP 5035-47) (motion). Hyundai opposed the prejudgment interest request, and filed a limited set of objections to the proposed written findings to the extent they departed from the court's oral ruling (reserving further issues for a motion under CR 52 and CR 59, following entry of the court's findings and conclusions). See (CP 5084-94) (opposition to prejudgment interest request); (CP 5095-5124) (memorandum addressing presentation of proposed findings and conclusions). On February 2, 2006, the court heard argument on those matters, and also the continuing status of the Smiths. See VRP (Feb. 2, 2006) 67:16-75:13 (colloquy between court and counsel).[32] On

[32]Although this Court had affirmed the judgment against the Smiths, in October the Smiths filed a motion asking the trial court to let them participate in the retrial to reargue the allocation of fault. See (CP 869-88). Magana supported this motion; Hyundai opposed. The trial court granted the Smiths' motion in an oral ruling issued on November 7, 2005. See VRP (Nov. 7, 2005) 40-44. On November 21, Hyundai filed a motion with this Court asking it to recall the mandate and issue an (continued . . .)

February 15, the court issued its written findings and conclusions, see (CP 5311-38) (findings and conclusions), and the following day its judgment (including prejudgment interest from the June 2002 verdict). See (CP 5341-44) (judgment).[33]

On Monday, February 27, Hyundai moved, under CR 52(b) and CR 59(a), for reconsideration and related relief. Hyundai will highlight two areas of its grounds for reconsideration:

- Willfulness. The trial court stated during her oral ruling that she "came into the hearing expecting some explanation" from Hyundai regarding the definition of claim, but "received no such information during [sic] the responsive materials or during the hearing itself." VRP (Jan. 20, 2006) 15:8-25. Hyundai then introduced the testimony of two new experts to address the issue. First, William Boehly, an expert in federal automobile safety regulations, who served for over 30 years with the National Highway Traffic Safety Administration, testified about the federal regulatory definitions of "claim" and "consumer complaint," explaining that none of the three Accent consumer hotline records predating HMA's Spring 2000 response to RFP No. 20 (Salizar, Martinez, and McQuary) would qualify as claims under the federal definition. See (CP 5583-84) (Boehly Decl. at 3-4,

---

(. . . continued)
amended opinion regarding the status of the Smiths. This Court denied that motion on December 8, and on December 15 the trial court issued its written ruling allowing the Smiths to participate. See (CP 2032-33).

[33]On February 17, the court entered a detailed CR 54(b) certification, to allow an appeal as of right notwithstanding the technical continuing pendency of Hyundai's cross-claim for indemnification from the Smiths. See (CP 5464-65) (certification at 5-6).

¶¶ 6-8).[34] Second, Peter Donnelly, Assistant General Counsel-Product Liability with Arvin Meritor and former in-house counsel with Ford Motor Company, testified that Hyundai's response to RFP No. 20, including its objection to scope and its treatment of the term "claims," was consistent with the practice of manufacturer defendants in crashworthiness litigation and should not have misled plaintiff's counsel regarding the possible existence of responsive consumer hotline records. See (CP 5656-58) (Donnelly Decl. at 2-4, ¶¶ 5-9).

- Prejudice. Regarding Magana's attempts to contact complainants, Lora Bennett, an experienced law librarian, testified to the various means available through the Internet to locate individuals, which allow one to go beyond more traditional means (e.g., calls placed to "information"). See (CP 5495-96) (Bennett Decl.).[35] Mike Runyan supplemented Bennett's testimony with his 30 years of experience as a trial lawyer, stating that Magana's efforts to contact individuals through listed phone numbers did not "even beg[i]n to scratch the surface of available methods for locating people[,]" and describing several other

---

[34]Magana's OSI expert, Lawrence Baron, referred generally to federal regulations, which set forth requirements governing auto manufacturers' consumer hotline systems, but did not volunteer the fact of federal definitions of "claim" and "complaint." See VRP (Jan. 17, 2006) 154:10-18. On reconsideration, Hyundai submitted evidence to establish that its hotline system fully complies with all federal requirements. See (CP 5661-62) (Johnson Decl. at 1-2, ¶¶ 2-3).

[35]Ms. Bennett's declaration attached the results of first level "Accurint" searches for the Salizar, Martinez, and McQuary complainants. See (CP 5563-71) (Ex. D through F of the declaration, reproducing results for Salizar, Martinez, and McQuary, respectively).

methods "at the disposal of . . . sophisticated litigators in Seattle" (such as Magana's counsel). See (CP 5761-62) (Runyan Decl. at 1-2, ¶¶ 3-7). Regarding Holcomb's testimony about loss of physical evidence she had initially retained from her accident, David Blaisdell (Magana's seat back performance expert) testified that information derived from the available OSI records (Ex. 27), as well as from Ms. Holcomb's testimony, was sufficient to establish lack of substantial similarity. See (CP 5576-77) (Blaisdell Decl. at 5-6, ¶¶ 12-16). Blaisdell also testified that the information derived from the available OSI records involving Accents (Exs. 9, 30, 31, 32, 36, 37, 38, and 40) was sufficient to establish lack of substantial similarity of these accidents, as well. See (CP 5577-78) (Blaisdell Decl. at 6-7, ¶¶ 17-19).

Magana offered no evidence to rebut any of Hyundai's supplemental submissions. The trial court nonetheless denied reconsideration. See (CP 5901-03). Regarding Hyundai's CR 59 evidentiary submissions: (1) the court "d[id] not consider it appropriate to insert additional materials into the record, without leave of the court and without opportunity for cross-examination"; and (2) the court stated that the declarations and materials submitted by Hyundai "d[id] not in any way undermine or negate" the court's findings of willful discovery violations that severely prejudiced "plaintiffs [sic] and the administration of justice." See (CP 5902) (Order at 2, ¶¶ 2-3).

L. After Hyundai Appeals, the Trial Judge Accepts an Award for "Trial Judge of the Year" From the Washington State Trial Lawyers Association, for Which She Was Nominated by Magana's Counsel.

Hyundai timely appealed following denial of reconsideration. See (CP 5904-46) (notice of appeal).[36] After the appeal was underway, Judge Johnson accepted an award from the Washington State Trial Lawyers Association as "Judge of the Year," for which she had been nominated by Magana's counsel. See Johnson Judge of the Year: State Trial Lawyers Honor Her for Role in Hyundai Case, The Columbian, July 20, 2006, 2006 WLNR 12504631; WSTLA "Trial News," Vol. 42, No. 1 at 17 (Sept. 2006).

III.

STANDARD OF REVIEW

Findings of fact are reviewed for "substantial evidence," which means a trial court's finding of fact may only be upheld if there is "evidence sufficient to persuade a rational fair-minded person the premise is true." E.g., Sunnyside Valley Irr. Dist. v. Dickie, 149 Wn.2d 873, 879, 73 P.3d 369 (2003). "Questions of law and conclusions of law are reviewed de novo." Id. at 880.

As to the standard of review for a default judgment sanction: The short answer is an appellate court reviews such a sanction for abuse of

[36]Pursuant to the court's original rulings, Magana's counsel submitted a request for attorneys' fees and costs incurred in the presentation of the sanctions motion. (CP 5457-59) (fees and costs submission). The trial court ultimately awarded a total of $126,393.28 in attorneys' fees and $38,441.29 in costs, and Hyundai timely filed supplemental notices of appeal following entry of the various fees and costs award orders. These documents are the subject of a Supplemental Designation of Clerk's Papers, being filed simultaneously with this Brief.

discretion. E.g., Mayer v. Sto Indus., Inc., 156 Wn.2d 677, 684, 132 P.3d 115 (2006). And as a general matter, a trial court abuses its discretion if it "relies on unsupported facts or applies the wrong legal standard" or "if the court, despite applying the correct legal standard to the supported facts, adopts a view that no reasonable person would take." Id. (internal quotations omitted).

But the short answer, as well as the general definition, should not be the end of this Court's standard of review inquiry in this case. As the federal courts have recognized, the term "abuse of discretion" "is a 'verbal coat of many colors.'" Toussaint v. McCarthy, 801 F.2d 1080, 1087-88 (9th Cir. 1986) (quoting Henry Friendly, Indiscretion About Discretion, 31 Emory L.J. 747, 763 (1982), in turn quoting United States v. L.A. Tucker Truck Lines, 344 U.S. 33, 39, 73 S. Ct. 67, 70, 97 L. Ed. 54 (1952) (Frankfurter, J., dissenting)). In actuality, "the abuse of discretion standard varies with the decision being reviewed." Toussaint, 801 F.2d at 1088 n.1 (citing C-Y Development Co. v. City of Redlands, 703 F.2d 375, 377 (9th Cir. 1983)). That is because:

> . . . a wide variety of decisions covering a broad range of subject matters, both procedural and substantive, is left to the discretion of the trial court. The justifications for committing decisions to the discretion of the court are not uniform, and may vary with the specific type of decisions. Although the standard of review in such instances is generally framed as "abuse of discretion," in fact the scope of review will be directly related to the reason why that category or type of decision is committed to the trial court's discretion in the first instance.

Id. at 1088 (citing United States v. Criden, 648 F.2d 814, 817 (3d Cir. 1981)) (emphasis added). As the late Judge Henry Friendly put it:

> [T]here are half a dozen different definitions of "abuse of discretion," ranging from ones that would require the appellate court

> to come close to finding that the trial court had taken leave of its senses to others which differ from the definition of error by only the slightest nuance, with numerous variations between the extremes.

Friendly, 31 Emory L.J. at 763 (quoted with approval in Toussaint, 801 F.2d at 1088 (emphasis added)).

Washington appellate courts have long recognized that not all discovery sanctions are created equal. Just this year our Supreme Court declared that "harsher" sanctions (a default judgment by definition being the harshest) require closer scrutiny than does the imposition of monetary sanctions. See Mayer v. Sto Industries (supra), 156 Wn.2d at 689-90 (holding that "on the record" consideration of the three part test laid down in Burnet v. Spokane Ambulance, 131 Wn.2d 484, 933 P.2d 1036 (1997), is not required when a trial court is imposing only monetary sanctions).

There are several reasons for this distinction. Due process requires finding a discovery violation to have been willful and to have substantially prejudiced a party's ability to prepare for trial, before a default can be imposed. See, e.g., Smith v. Behr Process Corp., 113 Wn. App. 306, 325, 54 P.3d 665 (Div. II 2002) (citing White v. Kent Medical Ctr., Inc., P.S., 61 Wn. App. 163, 176, 810 P.2d 4 (1991); Associated Mortgage Investors v. G.P. Kent Constr. Co., Inc., 15 Wn. App. 223, 227-28, 548 P.2d 558 (Div. II 1976)). And default judgments are further disfavored because, in the name of enforcing a procedural requirement, they cut short the judicial process and prevent determination of a case on its substantive merits. See, e.g., Showalter v. Wild Oats, 124 Wn. App. 506, 510, 101 P.2d 867 (Div. II 2004) (citing Griggs v. Averbeck Realty, Inc., 92 Wn.2d 576, 581,

599 P.2d 1289 (1979)). These considerations argue for close scrutiny of the trial court's decision to impose a default judgment on Hyundai as a sanction for discovery violations -- a sanction Judge Johnson herself acknowledged as the "nuclear option." VRP (Jan. 13, 2006) 74:4-6.

Three other factors support close scrutiny in this case:

First, trial courts are given latitude in imposing sanctions to "reduce the reluctance of courts to impose sanctions," because "[i]f a review de novo was the proper standard of review, it could thwart these purposes [by] hav[ing] a chilling effect on the trial court's willingness to impose sanctions." Washington State Physicians Ins. Exchange & Ass'n v. Fisons Corp., 122 Wn.2d 299, 339, 858 P.2d 1054 (1993) (internal quotations omitted). Washington courts have already recognized, however, that a sanction of default should only be imposed when no other sanction would remedy the discovery violation at issue. See, e.g., Burnet v. Spokane Ambulance, 131 Wn.2d at 494; Smith v. Behr Process, 113 Wn. App. at 325. Therefore, while this Court might not want to "chill" a trial court's willingness to impose sanctions generally, it is entirely appropriate for this Court to employ a standard of review in default cases that will cause trial judges in future cases to think twice before employing the "nuclear option."

Second, a key justification for abuse of discretion review is that the trial judge is typically thought to be "better positioned than another to decide the issue in question." Fisons, 122 Wn.2d at 339 (quoting Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 403, 110 S. Ct. 2447, 2459, 110 L. Ed. 2d 359 (1990)). As the Court of Appeals recently noted

in Skimming v. Boxer, 119 Wn. App. 748, 82 P.3d 707 (2004), trial judges are often thought to have "tasted the flavor of the litigation" in a way appellate courts cannot. 119 Wn. App. at 754 n.1 (quoting Miller v. Badgley, 51 Wn. App. 285, 300, 753 P.2d 530 (1988), in turn quoting Westmoreland v. CBS, Inc., 770 F.2d 1168, 1174 (D.C. Cir. 1985)). Indeed, Judge Johnson identified that rationale in her oral ruling imposing the sanction of default on Hyundai, claiming to be "intimately familiar with the facts of this case." VRP (Jan. 20, 2006) 22:17-24 (also referencing Justice Talmadge's quoting of "tasted the flavor" language in his dissent in Burnet, 131 Wn.2d at 509 (Talmadge, J., dissenting)).

Here, however, the issues turn on what happened during the discovery process of requests, objections, and productions, in which the trial court had no involvement. No discovery dispute came before the trial court until Spring 2002, long after the events relevant to this appeal occurred. And the handful of disputes that finally did come before the court had no relationship to the matters giving rise to the present controversy. Judge Johnson undoubtedly "tasted the flavor" of the first trial. But the record demonstrates that she did not "taste the flavor" of the discovery process that preceded that trial, and therefore had no familiarity that could inform her determinations regarding what actually happened during a period of the case so crucial to a just resolution of Magana's sanctions demand.

Third, here a default judgment has deprived parties of their right to a jury trial. Our Supreme Court has repeatedly acknowledged the imperative of our state constitution, that "the right of trial by jury shall

remain inviolate," e.g., Watkins v. Siler Logging Co., 9 Wn.2d 703, 710, 116 P.2d 315 (1941) (citing Article I, Section 21 of the Washington Constitution), and the corollary mandate to give the "highest protection" to the right to jury trial and to guard against its "diminish[ment] over time[.]" Sofie v. Fibreboard Corp., 112 Wn.2d 636, 656, 771 P.2d 711, as amended, 780 P.2d 270 (1989). Only the closest scrutiny of a trial court's decision to impose the sanction of default can fulfill this constitutional mandate when, as here, that sanction denies a party a trial by jury.

In sum, Hyundai urges this Court to give the trial court's determinations the closest scrutiny. Indeed, given the particular circumstances of this case, Hyundai urges that de novo review is actually called for. And even if this Court declines to apply de novo review, this Court should apply an abuse of discretion review that differs from the definition of error itself "by only the slightest nuance" (H. Friendly, 31 Emory L.J. at 763) -- if by any nuance at all.

IV.

ARGUMENT

A. The Trial Court's Default Judgment Should Be Vacated and the Case Remanded for a New Hearing on Sanctions.

1. The Trial Court Erred in Finding That Hyundai Committed "Willful" Discovery Violations. The issue of "willfulness" involves three, somewhat overlapping points: (1) Magana's first sanctions theory, which asserted Hyundai did not respond to Peter O'Neil's April 2001 letter demanding that Magana's Request for Production No. 20 be answered "as written"; (2) Magana's second theory, which asserted Hyundai attempted to

fool counsel into thinking Hyundai had no responsive seat back consumer hotline records, by a misleading use of the term "claim" in Hyundai's answers to RFP No. 20; and (3) a passel of other alleged violations (e.g., the Accent/Elantra "similar seat back" claim), some of which overlap with Magana's principal theories, and all of which underscore a supposed "pattern" of discovery abuse by Hyundai. None can sustain the trial court's willfulness finding, and therefore its default judgment.

a. The Trial Court's Finding of No Agreement to Take Seat Back OSI Discovery "Off the Table," in the Summer of 2001, Is Not Sustained by the Record. In FOF No. 35, the trial court stated it considered "all the available evidence" and found there was no agreement reached in Summer 2001 to take seat back OSI discovery "off the table." The court gave two reasons for this determination: (1) it "t[ook] into account the false premises created by the defendants' initial discovery responses"; and (2) "[i]t would be unreasonable, and not supported by the totality of the evidence, to conclude Plaintiff abandoned the issue of seatback failure which was the central issue of the [June 2002] trial." (CP 5322-23) (FOF No. 35).

The first point literally has nothing to do with whether an agreement was reached in Summer 2001 to take seat back OSI discovery off the table. The first point logically can bear only on whether such an agreement, if reached, was induced by Hyundai's initial responses to the OSI requests for production -- which is the essence of Magana's second willfulness theory.

The second point suffers from an equally basic, if different, flaw. The factual question Judge Johnson was asked to resolve was not whether

Magana had agreed to "abandon ... the issue of seatback failure" (CP 5323) (FOF No. 35) (emphasis added), but whether Magana had agreed to "abandon" his request for seat back OSI discovery. Judge Johnson's conflation of the "issue of seatback failure" (FOF No. 35), with the issue of whether Magana voluntarily took the subject of seat back OSI's "off the [discovery] table," also demonstrates she never appreciated how the case had changed back and forth in its course, all before she had any meaningful exposure to it. Judge Johnson simply did not "taste the flavor" of the discovery process preceding the first trial, and therefore has no legitimate claim to deference when it comes to review of her factual findings about what happened during that process. Nothing in those findings addressed the wealth of uncontroverted evidence, including the evolution of Magana's own discovery requests and a rich vein of correspondence, establishing that Magana's theory shifted away from seat backs to air bags, then back to seat backs -- all before Judge Johnson had her first substantive "taste" of the case, in January of 2002. Moreover, that evidence establishes it was during the "air bag" phase of the case that the parties reached agreement on the scope of OSI discovery.

Judge Johnson's finding of "no agreement" is further undermined by the untenability of her subsidiary determinations on this issue, set forth at Findings Nos. 33 and 34. In FOF No. 33, the trial court states that "Mr. Austin, in his Declaration, asserts that he responded to Mr. O'Neil's April 26, 2001 letter by letter dated July 11, 2001." Cf. (CP 5321) (FOF No. 30). But Austin's declaration actually states that he and O'Neil had a

series of "meet and confer" telephone conversations following the April 26 letter, and that the July 11 letter was the result of those discussions -- testimony not disputed by O'Neil. See (CP 3707-08) (Austin Decl., ¶¶ 20-21); (CP 4790-91) (O'Neil Decl., ¶¶ 1-4). Cf. (CP 5321) (FOF No. 30).

Next, in FOF No. 34, the court charges Austin with failing to memorialize his understanding that O'Neil was no longer pursuing seat back OSI's. Austin's declaration states he "asked Mr. O'Neil what he was really seeking by way of discovery[,]" (CP 3707) (Austin Decl., ¶ 20), and the July 11 letter Austin sent to O'Neil states that O'Neil "identified four areas that [he] . . . requested [Hyundai] respond to" -- none of which includes seat back OSI's (CP 3439). O'Neil now recalls that he never agreed to limit OSI discovery to air bags. See (CP 4791) (O'Neil Decl., ¶¶ 4-5). While one may credit Mr. O'Neil with a good faith recollection in 2006 that he reached no such understanding over four years before, it is beyond difficult to imagine how O'Neil, had he believed Hyundai was still obligated to provide seat back OSI's, would not have responded to Austin's July 11 letter by stating that the four areas of discovery identified in that letter were inadequate, or by failing to raise the issue when only air bag OSI's were produced the following month. Yet O'Neil never raised either issue until the eve of the second trial. See (CP 3708) (Austin Decl., ¶ 21).

The agreement issue disposes of Magana's first willfulness theory. Magana's own discovery expert, Jerry Greenan, acknowledged that an agreement would have relieved Hyundai of any obligation to seek a protective order, and that "there isn't sanctionable activity" merely because

the responding party had earlier presumed to limit the scope of the party's initial response. See VRP (Jan. 17, 2006) 62:18-22.[37] Whatever the court's familiarity with the case from January 2002 forward, Judge Johnson did not so much as nibble at it during the preceding discovery process. The record establishes that Hyundai responded to Peter O'Neil's April 2001 demands by initiating a "meet and confer" dialogue, which produced an agreement that relieved Hyundai of any obligation to produce seat back OSI's. The trial court's finding to the contrary should be reversed.

b. Plaintiff's Eleventh Hour Shift in Willfulness Theories Denied Hyundai a Fair Opportunity to Respond Fully to the Allegation That Hyundai's Initial Answer to RFP No. 20 Was Misleading (the "Claim" Issue); Yet Even Using the Trial Court's Definition of "Claim" Based Solely on the Evidentiary Hearing Record, Hyundai's Response in Fact Was Not Misleading. The trial court's finding, that Hyundai's responses to RFP No. 20 were evasive and misleading, was central to its decision to default Hyundai. See (CP 5316-19 & 5323-29) (FOF Nos. 7, 12-15, 17-18, 20-22, 24, 26, 37-53). That finding rested on the court's determination that Hyundai's definition of "claim" was not reasonable, and that Hyundai intended to mislead Magana's counsel into

[37]As previously noted, Greenan insisted Austin's letter had to state expressly that Magana's counsel was "withdrawing your claims on seatbacks" in order to constitute a "complete agreement" under CR 26(i). See n.28, supra, at 42 (citing VRP (Jan. 17, 2006) 70:20-24 (Greenan)). Greenan's supposed "complete agreement" requirement lacks support in the case law, and this Court should decline to provide any.

thinking Hyundai had no consumer hotline records responsive to the request. See, e.g., (CP 5316-18 & 5323) (FOF Nos. 14, 20 & 37).

Magana's sanctions motion was not at all about the meaning of "claim," until just before the evidentiary hearing commenced. Invoking the Martinez, McQuary, and Salazar consumer hotline records in his reply filed on Wednesday, January 11, 2006, Magana for the first time charged that Hyundai should have disclosed it had received complaints of seat back failures in Accents for model years 1995-1999. Yet not until Friday, January 13, at the hearing on whether to have an evidentiary hearing, did Magana's counsel first hint that the meaning of "claim" would be the issue, and not until counsel began their presentation of evidence on the following Tuesday did the specific basis for asserting Hyundai's use of the term claim was misleading begin to emerge.

At the close of the evidence, the trial court announced it was resolving the issue against Hyundai, declaring it "clear" that Hyundai's answer to RFP No. 20 was "not correct." See VRP (Jan. 18, 2006) 153:10-20. In fact, the record at the evidentiary hearing was anything but "clear." Magana never explained what "complaints," "notices," and "incidents" might refer to, if "claims" were deemed to encompass consumer hotline records. And Magana's discovery expert, Mr. Greenan, testified that RFP No. 20 called for production of consumer hotline records by the request's reference to "incidents," rather than its reference to "claims." See VRP (Jan. 17, 2000) 16:16-67:1

Moreover, whatever the state of the record at the close of the evidentiary hearing, Hyundai's motion for reconsideration materially changed the evidentiary mix, introducing new evidence demonstrating that consumer hotline records generally, and the crucial Martinez and McQuary records specifically,[38] should not be considered "claims." William Boehly, an expert in federal automobile safety regulations, testified that neither the Martinez nor the McQuary hotline reports met the federal definition of "claim." See (CP 5583-84) (Boehly Decl. at 3-4, ¶¶ 6-8). And Peter Donnelly, an attorney with extensive experience in responding to plaintiff production requests in auto products liability litigation, testified that Hyundai's responses to RFP No. 20, including its objections to scope[39] and its treatment of the term "claim," were consistent with the practice of manufacturer defendants in crashworthiness litigation, and should not have misled Magana's counsel about the possible existence of responsive hotline records. See (CP 5656-57) (Donnelly Decl. at 2-4, ¶¶ 5-9).

Magana offered no evidentiary rebuttal to this evidence. Denying reconsideration, Judge Johnson first took issue with Hyundai's failure to get permission before introducing new evidence into the record, in support of reconsideration. (CP 5902) (Order at 2, ¶ 2). Yet Hyundai plainly had

---

[38]As previously noted, Salazar, which Magana initially claimed to be a third Accent 1995-1999 hotline record predating Hyundai's "no claims" response, turned out to involve a different Hyundai model altogether. See n.25, supra, at 40.

[39]Although the trial court found Hyundai failed to make a burdensomeness objection, see (CP 5320) (FOF No. 27), HMC's response expressly made precisely that objection. (CP 3910-11) (HMC response).

no obligation, whether under CR 59 or any other provision of the Civil Rules, to get Judge Johnson's permission to introduce new evidence into the record in support of its reconsideration request. Judge Johnson also objected to Magana's inability to subject Hyundai's new evidence to cross-examination. (Id.) But especially in the context of a decision to employ the "nuclear option" of a default, this procedural point can only argue for reopening the evidentiary hearing.[40]

And even if one concludes Judge Johnson was entitled to disregard Hyundai's reconsideration evidence, her findings cannot be sustained on the evidentiary hearing record. Under the trial court's chosen definition, neither the Martinez nor the McQuary hotline records constituted "claims" -- yet those were the only consumer hotline records Magana could offer to prove Hyundai had hotline records responsive to RFP No. 20, when Hyundai served its response in April 2000.[41] In short, Hyundai's response was not

---

[40]Judge Johnson did state that she reviewed the new evidence, and it did not change her view of the facts. (CP 5902) (Order at 2, ¶ 2). That statement is especially puzzling regarding the Boehly and Donnelly evidence, since Judge Johnson had previously expressed her "expect[ation]" that Hyundai might offer the explanation for its actions that "claims had been defined in product liability practice in some limited matter." See VRP (Jan. 20, 2006) 15:9-18. Yet when presented with precisely such evidence, Judge Johnson declared it made no difference to her decision.

[41]The trial court found that the Martinez and McQuary records constituted claims ostensibly because they included a "demand" or "request" for a remedy. See (CP 5324-25) (FOF Nos. 40 & 41). Those findings are untenable, because the record discloses no such demands or requests. Martinez complained about the quality of service received, but did not couple that complaint with a demand or request for a remedy. See Ex. 31 (Martinez hotline records) (extracts attached as Ex. G of the Appendix to this Brief). And McQuary did not even lodge a complaint,
(continued . . .)

misleading, because it was accurate: As of April 2000, there had been "no personal injury fatality lawsuits or claims in connection with or involving the seat or seat back of the Hyundai Accent model years 1995-1999."[42]

In sum, Magana's second willfulness theory also cannot sustain the trial court's default judgment. Hyundai urges this Court to hold, based on the evidentiary hearing record, that Hyundai's response to RFP No. 20 was not misleading. Alternatively, the trial court's willfulness findings on the "claim" issue should be vacated, and the matter remanded for reconsideration based on the full evidentiary record before the court at the time of the denial of Hyundai's motion for reconsideration.

c. The Trial Court's Remaining Findings of "Serious" Violations Cannot Save the Court's Default Judgment. In FOF No. 6, the trial court adopted a list of violations, set forth on a chart used by Magana's counsel during closing argument, as "proven." See (CP 5315) (referring to "a handout provided . . . during closing argument and made a part of the record" as Exhibit 48). Whether the wholesale adoption of the

---

(. . . continued)
contacting the company hotline only to notify Hyundai about his concern that the seat back's performance might constitute a safety risk. See Ex. 32 (McQuary hotline records) (excerpts attached as Ex. H of the Appendix to this Brief).

[42]Moreover, that response was still accurate when the parties reached their July 2001 agreement to take seat back OSI discovery off the table. The Wagner hotline records (September 2000) (Ex. 36), contrary to the trial court's FOF No. 43 (CP 5325), did not contain a demand or request for a remedy -- like McQuary, Wagner contacted the company hotline only to inquire about whether the seats were defective. And Wagner was the only hotline record, concerning a 1995-1999 Accent, generated between Hyundai's April 2000 response to RFP No. 20 and the July 2001 discovery agreement.

contents of a closing argument chart satisfies the requirements of CR 52 need not be addressed, since the trial court went on to state that "the most serious violations, upon which the court primarily bases the imposition of sanctions, are those specifically discussed herein." (Id.) (emphasis added). Review of the court's findings discloses specific discussion of three other matters, which apparently met the trial court's test for "serious violation[.]" As Hyundai will show, none can withstand substantial evidence review, and even taken together could not constitute a valid alternative ground for sustaining the trial court's default judgment.

- Substantial similarity of the Elantra seats. The trial court found that what it called the Elantra "seat" was both "identical" (FOF No. 13) and "substantially similar" (FOF No. 16) to the Accent's "seat," and that Hyundai "concede[d] a similarity" when Magana's counsel demonstrated the "identi[ty]" between the two (FOF No. 13). See (CP 5316-17) (FOF Nos. 13 & 16). Based on those findings, the trial court declared Hyundai's response to Interrogatory Nos. 11 and 12 and RFP No. 20 to be evasive and misleading. See (id.).

The trial court's findings are not supported by the evidence. The trial court simply adopted Magana's assertion that Hyundai conceded the similarity of the Elantra and Accent seats, based on Magana's reading of Mr. Austin's October 11, 2005 letter to Mr. O'Neil, and Hyundai's October 25 supplemental responses to Interrogatory No. 12 and RFP No. 20. But those documents contain no such concession, instead pointing out that a similarity in the recliner mechanism does not make the front seats similar.

See (CP 4050) (Oct. 11, 2005 letter from Mr. Austin at 1); (CP 4062-64) (Oct. 25 supplemental responses to Interrogatory No. 12 and RFP No. 20).

Moreover, Hyundai was correct: Using the same recliner mechanism did not make the Elantra and Accent seats substantially similar. Hyundai submitted the Declaration of William E. Stewart in opposition to Magana's motion for sanctions, which went virtually unrebutted. All Magana offered in response was a belated recycling of the declaration of Stephen Syson submitted in support of Magana's October 2005 motion to compel. See (CP 784-86) (Syson Decl.); VRP (Jan. 19, 2006) 107:4-108:2 (closing argument of Magana counsel Mike Withey). But as Stewart and David Blaisdell (who submitted a supplemental declaration in connection with Hyundai's motion for reconsideration) both explained, that two seats share one or two individual components that are similar or the same does not make the seats themselves similar or the same. See (CP 3273) (Stewart Decl., ¶ 9); (CP 5578-79) (Blaisdell Recon. Decl., ¶ 20).

The trial court made no effort to come to grips with that evidence. Moreover, the trial court compounded its neglect with a more fundamental error -- confusing the issue of "similar in fact" with the issue of whether Hyundai had a reasonable basis for its denial of similarity. Hyundai might be deemed mistaken on the issue of "similar in fact," but the unrebutted scope of the Stewart and Blaisdell evidence compels the conclusion that Hyundai was being neither "evasive" nor "misleading" when it denied that the front right seat of the 1996 Accent was identical or substantially similar to the right front seat of any other Hyundai vehicle.

- Documents From ACEVEDO v. HYUNDAI. The trial court's November 2005 discovery order directed Hyundai to produce all documents relating to allegations of seat back defects, in every Hyundai vehicle with a single recliner mechanism. Hyundai promptly produced boxes of legal complaints, petitions, police reports, photographs, deposition transcripts and other materials from some 20 lawsuits going as far back as the 1980's. In carrying out this effort, Hyundai failed to produce the files from one lawsuit -- the Acevedo case.

Hyundai does not dispute that its failure to produce those documents violated the trial court's order. Tom Vanderford testified that the failure to produce the records of the Acevedo case was the result of a misrecollection of the case as a seat belt and not a seat back case. See (CP 3303-05) (Vanderford Decl., ¶¶ D.1-D.5); VRP (Jan. 18, 2006) 119:13-120:11. Moreover, the record confirmed that the oversight was not indicative of any malicious "pattern" on Hyundai's part; even the web site of the Acevedo plaintiff lawyers shows they considered the case to be a seat belt case. See (CP 3304, 3415) (Vanderford Decl., ¶ D.5 & reproduction of web site posting, attached to Vanderford Decl. as Ex. J); see also (CP 3254) (Decl. of Philip Talmadge, ¶ 6 ("isolated" discovery violations do not support a finding of willfulness)).

The trial court placed great stress on the fact that Hyundai's Acevedo documents had not been produced by the time of the evidentiary hearing, finding the initial oversight to be "clear" proof of an "inadequate document retrieval system" and concluding that "the failure to produce the

Acevedo claim casts doubt on whether all responsive documents ha[d] been produced." See (CP 5321) (FOF Nos. 28-29). Yet the court had no basis for its sua sponte suggestion that the failure to produce the records of a single isolated case, which both sides characterized as a seat belt and not a seat back case, should support an indictment of a document retrieval system that (to give just one example) allowed Hyundai to screen over 900,000 consumer hotline computer records, identify some 10,000 potentially responsive files, and from those identify the several dozen actually responsive files -- all within just a few weeks of the court's production order, and even as the same staff was engaged in preparations for the retrial itself.[43] And while the court may have been distressed that the Acevedo files had yet to be produced by the time of the evidentiary hearing, the circumstances of this courtroom "revelation" proved far more indicative of a trial theatric deliberately staged by Magana's counsel, who bypassed numerous opportunities to address the matter directly with Hyundai's counsel in favor of a (supposed) "gotcha" moment during their examination of Mr. Vanderford. See (CP 5766-67) (Vanderford Decl., ¶¶ 2-3).[44]

---

[43]Judge Johnson also faulted Hyundai for not having a computer records system that would have allowed a presumably burdensomeless search of its hotline records. See (CP 5320) (FOF No. 27). Yet no evidence whatsoever was introduced to show that Hyundai could have configured its computer system to allow for such a burdensomeless search -- the notion was not even raised by Magana, but only by the court sua sponte in her ruling -- and testimony from Hyundai's computer systems expert, Mr. Johnson, established that Hyundai's system fully complied with federal regulatory requirements. See (CP 5661-62) (Johnson Decl., ¶¶ 1-4).

[44]Moreover, Magana already had access to the files of the Acevedo
(continued . . .)

- Hyundai's responses in PARKS v. HYUNDAI. The trial court initially treated the Georgia case of Parks v. Hyundai Motor America, Inc., 575 S.E.2d 673, 258 Ga. App. 876 (2002), as evidence of a "pattern of lack of compliance with discovery obligations" on Hyundai's part. See (CP 5319) (FOF No. 23). The trial court cited to the decision of the Georgia Court of Appeals, and the declaration of Ms. Rita Williams, counsel for the plaintiff in Parks. The Georgia Court of Appeals, however, made no determination about whether Hyundai complied with its discovery obligations. As for Williams' declaration: It was part of Magana's reply filed less than one week before the start of the evidentiary hearing. See (4257-89) (decl., with exhibits). After the trial court embraced Williams' assertions, Hyundai submitted a declaration from Charles Reed, counsel for Hyundai in Parks, who testified that the trial court "never ruled on the Plaintiffs' motion to compel, never made a finding of discovery abuse, and never sanctioned Hyundai." (CP 5760) (Reed Decl., ¶ 5).

The trial court then amended its findings by striking the reference to a "pattern of lack of compliance," and substituting the assertion of a "similarity of circumstances of the Parks case and the case herein regarding production of OSI documents by Hyundai." See (CP 5902) (order on reconsideration at 2, ¶ 3). But the only "similarity" identified by the court was Hyundai's production of 33 OSI's in Parks -- a production

---

(. . . continued)
plaintiff's lawyers, as his sanctions submission established. Yet Magana did not so much as speculate what Hyundai might provide that would materially affect the potential admissibility of Acevedo at trial.

evidently done without the need for a court order, and which only parallels Hyundai's production of 21 air bag OSI's pursuant to the parties' Summer 2001 discovery agreement.

In sum, the other so-called "serious" violations also cannot sustain the trial court's willfulness findings, and by extension its default judgment.[45] They either are not violations at all (the Elantra/Accent "similar seat" imbroglio), neither material nor willful (the Acevedo files matter), or discredited (the Parks claims).

2. The Trial Court Erred in Finding That the Plaintiff Was Prejudiced. Magana also failed to establish that any discovery violations actually prejudiced his right to a fair trial. The trial court's decision to take away Hyundai's right to a jury trial, and eliminate any possibility of resolving this case on the merits, even though a fair trial for both parties still would have been possible, is an error that alone mandates reversal of the default judgment and a remand for further proceedings, under controlling principles of due process.

a. A Default Judgment Is Only Appropriate When a Discovery Violation Deprives a Plaintiff of the Ability to Have a Fair Trial. In discussing the standard of review to be applied in this case, Hyundai

[45]Although the trial court mentioned the undisclosed sled test issue (CP 5318) (FOF No. 19), the lack of any specific discussion of that issue would indicate the court did not consider the (admitted) failure to disclose the test a "serious" violation. As previously discussed, the record establishes that Hyundai produced well over 100 tests, and the one overlooked test actually supports Hyundai's position on the issue of seat back design defect. See § II.I, supra, at 39 (citing relevant portions of the record).

identified several factors that bear on the closeness of the scrutiny to which an appellate court should subject the sanction of default. Those factors also bear on the requirement of prejudice as a precondition to imposing such a sanction.

To begin, there is the policy disfavoring default judgments, because of our state's "overriding policy which prefers that parties resolve disputes on the merits." Showalter v. Wild Oats (supra), 124 Wn. App. at 510, citing Griggs v. Averbeck Realty, Inc. (supra), 92 Wn.2d at 581. In defaulting Hyundai, the trial court invoked the need to protect "the truth seeking process" against discovery abuse. See (CP 5329) (FOF No. 54) (citing and quoting from page 2 of the declaration testimony of former Washington Supreme Court Justice Robert F. Utter); (CP 2652) (Utter Decl., ¶ 3). But while wrongful failure to produce documents undoubtedly interferes with "the judicial system's ability to engage in the truth seeking process" (CP 2652) (Utter Decl., ¶ 3), the search for truth itself only culminates at trial, when a fact-finder reaches a decision on the merits. See State v. Thompson, 58 Wn.2d 598, 605, 364 P.2d 527 (1961) ("Paraphrasing the language of an oath, a trial is a search for the truth, the whole truth, and nothing but the truth"); Nix v. Whiteside, 475 U.S. 157, 166, 106 S. Ct. 988, 89 L. Ed. 2d 123 (1986) ("[T]he very nature of a trial [is] a search for truth"). Hence, when courts express their disfavorment of default judgments because they short-circuit a resolution of a case on the merits, courts also are saying that default judgments are disfavored because they short-circuit the search for the truth, by preventing the trial that is our judicial system's primary means for determining the truth of the controversies that come before it. See, e.g., State

v. Grimes, 30 Wn. App. 55, 57, 631 P.2d 1024 (1981) ("The object of the trial is to find the truth"); State v. Sabbott, 16 Wn. App. 929, 931, 561 P.2d 212 (Div. II 1977) ("The purpose of a trial is to find the truth").

Moreover, in this case, a jury was to have responsibility for finding the truth of the controversy between Magana and Hyundai. Was the seat back of the 1996 Hyundai Accent unreasonably dangerous as designed? Was Magana seated in the front seat at the time of the accident? The jury was to determine the answers to those questions, thereby resolving whether Hyundai should pay money damages to Magana as compensation for his injuries. Under our state constitution, Hyundai's right to have a jury answer those questions is to be kept "inviolate" (Wash. Const. art. I, § 21), which as our state Supreme Court has explained "connotes deserving of the highest protection":

> Applied to the right to trial by jury, this language indicates that the right must remain the essential component of our legal system that it has always been. For such a right to remain inviolate, it must not diminish over time and must be protected from all assaults to its essential guaranties.

Sofie v. Fibreboard Corp. (supra), 112 Wn.2d at 656 (opinion for the court per Utter, J.) (emphasis added). Accordingly, while the principles that determine the rights and obligations of parties and their counsel during the course of discovery may recently have undergone what some have described as a "sea change," e.g., VRP (Jan. 17, 2006) 23:18 (Greenan), that rules-driven change cannot be allowed to "diminish" the "essential guaranties" of our state's constitutional right to trial by jury.

Finally, and most fundamental, are the demands of due process. Washington courts repeatedly have held that a default may only be imposed upon proof of substantial prejudice, as a matter of basic due process. See Smith v. Behr Process, 113 Wn. App. at 325, citing White v. Kent Med. Ctr. (supra), 61 Wn. App. at 176, and Associated Mortgage Investors v. G.P. Kent Constr. Co. (supra), 15 Wn. App. at 227-28.

Applying all of those principles to the sanction of a default judgment, Hyundai urges this Court to hold that:

- A party may not be sanctioned with a default judgment for discovery violations unless the record establishes the discovery violations have made a fair trial impossible;
- As a matter of law, a fair trial is possible if remedial sanctions can neutralize the consequences of the discovery violations; and
- If the trial must be delayed in order to put in place remedial sanctions to neutralize the consequences of the discovery violations, it is preferable to delay the trial than to impose a default judgment where a fair trial is possible, provided the sanctioned party compensates the moving party financially for the costs of the delay.

As Hyundai will demonstrate, Judge Johnson's choice of a default judgment fails that test, and for that reason alone should be reversed.

b. At the Time the Trial Court Defaulted Hyundai, a Continuance Was Essential to Determine Whether Plaintiff Had Been Prejudiced. Based on the facts available at the time the trial court entered the default judgment, it was literally impossible to determine whether

Magana's ability to have a fair trial on liability was materially prejudiced by the "late" production of OSI materials by Hyundai. The only way Magana could have provided the trial court with what it needed to determine prejudice was by investigating and developing the OSI material that Hyundai produced. The trial court therefore should have ordered a continuance, not as a "sanction," but as a remedial tool necessary to give the parties and the court the time required to determine the extent of any prejudice arising from Hyundai's "late" production -- and to determine whether any remedy short of a default could obviate the prejudice and thereby preserve a fair trial on Magana's claims.

In deeming a continuance inappropriate, the trial court misunderstood its purpose. See (CP 5333) (FOF No. 69); see also (CP 5531, 5333) (FOF Nos. 63 & 68). The trial court's first error in rejecting a continuance was viewing it as a "sanction" in and of itself, rather than a means to determine what, if any, prejudice Magana actually suffered. The trial court then compounded its error when it reasoned that a continuance:

> . . . would not remedy the staleness of the evidence in question; it would not remedy the difficulty of the Court in addressing these issues; it would involve further substantial costs to the parties in terms of analyzing the evidence with respect to their experts; it would involve substantial duplication of effort which had previously been done in preparation and re-preparation for this trial. A continuance would only exacerbate that situation. It would not benefit the plaintiff, it would benefit the defendant. Therefore, a continuance is not an appropriate remedy.

(Id.) That reasoning is flawed in every particular.

First, nothing can "remedy the difficulty of . . . addressing [OSI] issues," because that difficulty is unavoidable once a party chooses to take

a case down the OSI path. Likewise, "substantial costs to the parties in terms of analyzing the evidence with respect to their experts" are unavoidable when a party chooses to pursue the possibility of admitting OSI evidence at trial. Second, while a continuance would not remedy "the staleness of [any] . . . [OSI] evidence," a continuance was essential in order to determine the extent of staleness of evidence that might otherwise be admissible. And while a continuance might involve "substantial duplication of effort," the expense could readily be remedied by the lesser penalty of a monetary sanction (of a sort the trial court proved itself perfectly capable of assessing, as part of its overall "package" of sanctions levied against Hyundai).

Finally, a continuance can be viewed as not "benefit[ing] the plaintiff" and only "benefit[ing] the defendant[s]" only if one treats requiring Magana's counsel to "analyz[e] the evidence" to determine actual admissibility as a burden from which Magana is entitled to be relieved. That conclusion follows only if one does not require Magana to show actual prejudice as a condition to imposition of a default judgment. And such a result is plainly untenable under governing due process principles.

c. Plaintiff Failed to Prove "Staleness." The trial court stated that "[i]t is virtually impossible for the Court to conduct that type of vigorous inquiry with respect to any incidents that now are so old that witnesses cannot be contacted, evidence cannot be obtained, and plaintiff has not had the opportunity to investigate these OSI's." (CP 5331) (FOF

No. 62); see also (CP 5329, 5331, 5333, 5335) (FOF Nos. 55, 60, 63, 64, 68 & 73) (all addressing whether a delay in production of the OSI's prejudiced Magana). That determination is not sustained by the record.

Counsel put Mr. Magana himself on the stand, and asked him to explain how he made some telephone calls to numbers listed on some of consumer hotline records produced by Hyundai. See VRP (Jan. 17, 2006) 90:2-93:19. Counsel then introduced a chart (Exhibit 1) summarizing Magana's efforts. This showing does not represent anything close to a serious effort to contact witnesses or obtain other evidence. As detailed in the Declarations of Michael Runyan and Lora Bennett, submitted by Hyundai in support of its motion for reconsideration, attorneys have many highly effective means at their disposal for locating witnesses and other individuals. Runyan, an experienced trial lawyer, explained that attorneys can make use of law library staff, witness location services, and private investigators to locate witnesses. See (CP 5761-62) (Runyan Decl., ¶¶ 3-7). Bennett, an experienced law librarian, explained the resources she uses to obtain additional contact information for witnesses. See (CP 5495-96) (Bennett Decl., ¶¶ 2-7).[46]

Magana is represented by a sophisticated and resourceful law firm, and the attorneys of that firm have access to the same witness location methods as Hyundai's counsel. While Magana undoubtedly was sincere in

[46]Moreover, Bennett and one of her colleagues ran searches for several of the individuals named in the OSI reports, and those searches turned up additional contact information beyond what appears on the consumer hotline report. See (CP 5495-96) (Bennett Decl., ¶¶ 2-7); (CP 5563-71) (Exs. D through F, reproducing search results).

his efforts to track down witnesses, the results of his effort cannot be deemed to establish staleness. Only an investigation marshaling the resources of the sort outlined in the testimony of Runyan and Bennett would be likely to shed meaningful light on whether Magana has been prejudiced by any improper delay in the production of the OSI material at issue. The evidence of the "investigation" conducted here should be deemed insufficient as a matter of law to support the finding of material prejudice, which is a constitutional prerequisite for the imposition of a default judgment sanction.[47] Yet without a meaningful investigation, the value of the OSI material produced by Hyundai -- and any prejudice due to "late" production -- literally cannot be known.

d. Plaintiff Also Failed to Establish Whether OSI's Would Have Been Admitted at Trial, or Their Evidentiary Value. The trial court made no effort to analyze whether any of the OSI information might have been admissible at trial, instead simply declaring that the OSI

[47]The contrast with Magana's effort to persuade the trial court to default Hyundai is telling. Out of more than 500 hours of work on the sanctions motion, the only apparent effort Magana's counsel made to investigate the OSI's themselves was to spend a few hours contacting Holcomb and preparing her testimony, and to ask Magana himself to call some (but not all) of the phone numbers on the consumer complaint forms. Indeed, it appears that counsel spent more than 10 times as much money on their oversize color chart than on actually investigating the OSI's. See (CP 5358) (O'Neil); (CP 5376) (Withey); (CP 5383) (Vanderwood); (CP 5389) (Brodkowitz); (CP 5379) (cost of color chart illustrating OSI's and other events, a fold-out copy of which appears in the record as part of Ex. 48). It simply was not reasonable for the trial court to find that Magana should be awarded those fees and costs as supposedly "occasioned" by any discovery violations, see (CP 5335) (FOF No. 74), when those expenses were so plainly caused by the tactical decision to pursue a default instead of a proper evaluation of the OSI's themselves.

"[i]nformation now disclosed is highly relevant to [the product liability] issue." (CP 5331) (FOF No. 59). That statement hardly scratches the surface of relevancy. What is relevant for purposes of discovery is far broader than what is relevant for the purpose of admissibility, a distinction Magana himself highlighted in his October 2005 motion to compel. See (CP 793) (Motion to Compel at 7). CR 26(b)(1) states that "[i]t is not a ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." But to be relevant for admissibility at trial, evidence must have a "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence" (ER 401), and not have "its probative value . . . substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence" (ER 403).

Whether OSI evidence in particular is admissible at trial is a question of whether the party seeking to admit it can establish that the OSI is "substantially similar" to the accident at issue. VRP (Jan. 18, 2006) 70:20-71:18 (Swartling). Accord, O'Dell v. Chicago, Milwaukee, St. Paul & Pac. R.R., 6 Wn. App. 817, 826-28, 496 P.2d 519 (1972) (OSI evidence is only admissible if the prior incidents occurred under "the same or similar circumstances"); Barker v. Deere & Co., 60 F.3d 158, 162 (3d Cir. 1995) ("every court of appeals to have considered this issue agrees

that when a plaintiff attempts to introduce evidence of other accidents as direct proof of a design defect, the evidence is admissible only if the proponent demonstrates that the accident occurred under circumstances substantially similar to those at issue in the case at bar") (internal citations omitted) (both reversing judgments on jury verdicts for plaintiffs, finding error in the admission of OSI evidence). The record before the trial court established that OSI evidence is routinely excluded when substantial similarity is not established, both on threshold relevancy grounds and ER 403 "more prejudicial than probative" grounds. See VRP (Jan. 18, 2006) 80:6-17 (Swartling).[48] And even when OSI evidence is admitted, its evidentiary weight can still be challenged.

At trial, Magana would have had the burden to show why evidence of other accidents ought to be admitted as evidence purporting to show a defect. Here, there is a very good chance that most -- perhaps all -- of the OSI's at issue would not be admissible at trial. Mr. David Blaisdell, Hyundai's seat back performance expert, explained why none of the nine reports listing the vehicle at issue as an Accent is substantially similar enough to warrant admission. (CP 5577-78) (Blaisdell Recon. Decl., ¶¶ 17-19). All nine reports refer to rear-impact collisions that are distinct from Magana's collision, both in terms of the degree of force applied to the seat back and the angles at which the force was applied, which would

[48] Although Mr. Baron, Magana's OSI expert, testified he had never seen OSI evidence excluded on ER 403 grounds, he agreed that OSI evidence must satisfy the substantial similarity requirement, and that such material is routinely challenged for lack of similarity. See VRP (Jan. 17, 2006) 157:3-159:14 & 185:22-186:6.

render them irrelevant because of their lack of similarity. See (CP 5579-80) (id., ¶ 22). Moreover, even if Magana's counsel were to locate the individuals named in those reports and bring them to testify, Nikki Holcomb's testimony at the evidentiary hearing strongly suggests the outcome would only be to confirm the lack of substantial similarity. Blaisdell reviewed Ms. Holcomb's testimony, and concluded it only confirmed what the consumer hotline report showed -- her accident was a moderate to severe rear-impact collision that was not substantially similar to Magana's. (CP 5576-77) (id., ¶¶ 14-16).[49]

The trial court also declared that the OSI's at issue went to the "heart" of Magana's product defect claim. See (CP 5323) (title to Section III of the court's findings); (CP 5332) (FOF No. 65). That mischaracterizes the factual dispute between the parties. The dispute on the product defect claim is whether yielding seat backs are a safe design. Both sides agree that seat backs yield -- or, as Magana likes to puts it, "fail" -- in rear-impact collisions, and the OSI's are at best illustrative

[49]The non-Accent OSI's suffer from the additional difficulty of lacking substantial similarity of design. At the evidentiary hearing, Magana placed great stress on the number of OSI's at issue, using their oversize chart to convey the point through the use of colored boxes for each OSI at issue. See Ex. 48 (reproducing chart in reduced, fold-out form). But the overwhelming majority of OSI's shown did not involve Accents. See Ex. 48 (foldout chart) (indicating Elantras in yellow and all other non-Accents in purple). As discussed, the only evidence Magana offered to show similarity of the non-Accent/non-Elantra vehicle seats was a declaration of Stephen Syson previously offered to establish discoverability -- a materially different inquiry from actual admissibility at trial. Hyundai, on the other hand, introduced the testimony of Stewart and Blaisdell, who refuted similarity of design assertions. See (CP 327) (Stewart Decl., ¶ 9); (CP 5578-79) (Blaisdell Decl., ¶ 20).

evidence on this point, as the Nikki Holcomb OSI illustrated. After examining the Holcomb OSI report and reviewing her testimony, Blaisdell explained that Ms. Holcomb's seat appears to have yielded as a result of a moderate rear-impact collision, which is exactly what it is designed to do. (CP 5576) (id. ¶ 13).

Given the testimony by Hyundai's experts acknowledging that seat backs are designed to and do yield, it is difficult to imagine how Magana could have been seriously prejudiced by late production of material that merely confirms an undisputed fact. Whether seat backs yield is not at the "heart" of the product defect case, because that they yield is not in dispute. The dispute at the heart of the product defect case is whether that yielding is a safe design, and evidence that Holcomb's seat or any other Hyundai seat yielded adds nothing to the jury's ability to decide whether a seat back designed to yield is a dangerously designed seat back.

e. The Closing Argument in BREWSTER v. HYUNDAI Cannot Establish Prejudice in This Case. Finally, there is the issue of the portion of the closing argument made by Mr. Tom Bullion, Hyundai's counsel in Brewster v. Hyundai, a crashworthiness case tried to a federal jury in the United States District Court for the Eastern District of Texas in 2004, upon which the trial court placed great weight. See (CP 5330) (FOF No. 56). Magana included the extract from Brewster in his papers, but offered no evidence from the case to establish any similarity between the accident in that case and Magana's accident. After the trial court chose to ground her findings in part on the Brewster closing

argument fragment, Hyundai was able to prevail on Mr. Bullion to provide a declaration testifying to the differences between the two cases.[50]

As Mr. Bullion explained, the accident in Brewster was highly unusual: Ms. Brewster's Hyundai was rear-ended by a truck with sufficient force to crush the rear of her vehicle through the back seat and so far forward that the front seat back was unable to yield, as it would have in a more typical moderate to severe rear-impact collision. (CP 5649-52) (Bullion Recon. Decl., ¶ 2); see (CP 5575) (Blaisdell Decl., ¶ 9). Moreover, instead of alleging that the seat back was defectively designed because it yielded, Ms. Brewster alleged that the lumbar support portion of the seat back defectively gave way. See (CP 5650) (Bullion Decl., ¶ 3); see (CP 5575) (Blaisdell Decl., ¶ 9).

In short, Mr. Bullion's decision to highlight the absence of any other claims of the kind of defect alleged in Brewster plainly is not relevant to the possible value of OSI evidence in this case. Brewster was a dramatically different case, with different facts and a different claimed defect. If it were appropriate to look at any of Hyundai's closing arguments from past trials to see how important the lack of OSI evidence might be in a particular case, Mr. Austin's closing in the first trial of this case presumably would be the most relevant. Yet there, even though Magana had not introduced or sought to introduce any OSI evidence on

[50]During the run-up to the sanctions hearing, the trial court was well aware that Mr. Bullion was unavailable to participate in the proceedings because of a medical crisis involving his newborn twin sons. See (CP 4356-57) (Bullion Continuance Decl.).

any topic, Mr. Austin never once mentioned the lack of OSI evidence in his closing argument. See (CP 5672-5721) (June 2002 Trial [XV] 2355-2403) (Hyundai's closing argument).

3. Hyundai Did Not "Volunteer" for a Default, and the Trial Court Ignored the Availability of a Lesser Sanction That Could Cure Any Prejudice While Preserving Both Sides' Right to a Trial on the Merits. The trial court found that "[d]efense counsel Mr. King admitted in closing argument that taking the facts of the OSI seat back failures as established, one remedy referred to in CR 37, would be the same as or tantamount to ordering default judgment." See (CP 5334) (FOF No. 70). This statement mischaracterizes Hyundai's closing argument. Hyundai argued in closing that if (1) Plaintiff's characterization of OSI evidence as the "gold standard" was taken seriously, (2) the entirety of Magana's OSI evidence at issue was admitted at trial, and (3) Hyundai's counsel and experts were also forbidden from in any way challenging the probative weight of any of that evidence, then that sanction would be tantamount to default. See VRP (Jan. 19, 2006) 87:4-88:14. But as the record of the argument reflects, counsel was careful to distinguish this draconian action from more limited sanctions (e.g., admitting all of the Accent OSI's). See VRP (Jan. 19, 2006) 88:15-90:13.

Moreover, a specific lesser sanction than default was suggested -- indeed, compelled -- by Magana's prejudice claim. According to Magana, the specific problem is one of staleness. Yet by definition, that form of prejudice can be fully remedied by admitting OSI's shown to be affected by staleness -- i.e., where it has been shown that opportunities to develop

substantial similarity have been lost because of the delay in production -- and barring Hyundai from challenging admissibility on any ground found to be affected by such staleness. See (CP 5467, 5475) (Hyundai's motion for reconsideration at 2 & 10). That remedy is complete, and preserves Hyundai's right to jury trial. Nothing in Hyundai's closing argument can fairly be read as waiving that point, which is compelled by the iron logic of Magana's own prejudice theory.

4. The Discovery Violations Plaintiff Alleges Cannot Support a Default on the Seating Position Issue. Magana claims (1) he was sitting in the front passenger seat at the time of the accident, (2) the front passenger seat's occupant restraint system was defective, and (3) that defect was a proximate cause of his injuries. Hyundai responded that (1) Magana was sitting in the back seat at the time of the accident, so whether the front passenger seat's occupant restraint system was defective is irrelevant to the cause of Magana's injuries, and (2) even if Magana was sitting in the front seat, Hyundai still is not liable, because the front passenger seat's occupant restraint system was not defective. The trial court's decision to sanction Hyundai stems from its conclusion that Hyundai violated its discovery obligations with respect to evidence of the seat back's safety. But that conclusion offers no basis for defaulting Hyundai on the proximate cause question of who was sitting where. That

question has nothing to do with the product defect issue, and Hyundai can win a defense verdict on that basis alone.[51]

B. A Remand to a New Judge Is Necessary to Preserve the Appearance of a Fair and Impartial Judicial Process.

Should this Court vacate the trial court's default judgment, the case will be remanded a second time. That remand will require the trial court to make rulings on literally scores of evidentiary and other motions, which will profoundly affect the course of the second trial. Under the circumstances of this case, remand to a new judge is necessary to preserve the appearance of fairness, and thereby public confidence in the administration of justice.

1. Mere Suspicion of Bias or Prejudice Warrants Remanding to a New Judge; Remand Is the Safest Course to Take, to Preserve Public Confidence in Fairness of the Judicial Process. In its decision in Chicago, Milwaukee, St. Paul & Pacific Railroad Co. v. Washington State Human Rights Commission, 87 Wn.2d 802, 557 P.2d 307 (1977), our Supreme Court declared that "[i]t is fundamental to our system of justice that judges be fair and unbiased":

> The principle of impartiality, disinterestedness, and fairness on the part of the judge is as old as the history of courts; in fact, the administration of justice through the mediation of courts is based upon this principle. It is a fundamental idea, running through and pervading the whole system of judicature, and it is the popular

[51]Although the trial court made passing references to the interrelated "kinematics" issues, see (CP 5330) (FOF Nos. 57-58), the court offered no explanation to buttress any alleged interrelationship. In fact, the seating position issue is an independent issue the resolution of which turns on independent evidence, and Magana made no serious attempt to link any OSI discovery violations to the seating position issue.

> acknowledgment of the inviolability of this principle which gives credit, or even toleration, to decrees of judicial tribunals. Actions of courts which disregard this safeguard to litigants would more appropriately be termed the administration of injustice, and their proceedings would be as shocking to our private sense of justice as they would be injurious to the public interest.

Id. at 808 (in part citing and quoting State ex rel. Barnard v. Bd. of Educ., 19 Wash. 8, 17-18, 52 P. 317 (1898)). Moreover, the court continued:

> Our system of jurisprudence also demands that in addition to impartiality, disinterestedness, and fairness on the part of the judge, there must be no question or suspicion as to the integrity and fairness of the system, [i].e., "justice must satisfy the appearance of justice."

87 Wn.2d at 808 (emphasis added) (citing Offutt v. United States, 348 U.S. 11, 14, 75 S. Ct. 11, 13, 99 L. Ed. 11 (1954)).

Since establishment of the "mere suspicion" test, Washington appellate courts have remanded matters to new judges, to assure the appearance of fairness:

- In Sherman v. State of Washington, 128 Wn.2d 164, 905 P.2d 355 (1996), Sherman, a doctor enrolled in the University of Washington's residency program, challenged his termination for alleged substance abuse. 128 Wn.2d at 169-70. The trial court granted summary judgment to Sherman on his various legal claims. Just prior to the damages hearing on those claims, counsel for the defendants learned that the trial judge had ex parte contact with a doctor at a drug treatment program Sherman had gone through, at the time the judge was considering Sherman's motion for reinstatement. Id. at 181-82. The trial court refused to vacate its prior rulings, or to recuse, and subsequently awarded

Sherman almost $900,000 in compensatory damages, punitive damages, and attorneys' fees and costs. Id. at 182-83.

On appeal, the Supreme Court reversed the summary judgment in Sherman's favor and remanded for a trial. The Supreme Court also concluded that the trial judge's improper ex parte contact was a violation of Canon 3 of the Code of Judicial Conduct. See id. at 204-05. That left the question of whether the violation required recusal. The Supreme Court rejected the "actual prejudice" standard that Sherman urged, and instead held that remand to a new judge was necessary because it was simply "the safest course":

> By contacting the [program] . . . for information about the monitoring process for chemically dependent physicians, the trial judge may have inadvertently obtained information critical to a central issue on remand . . . . Given that fact, a reasonable person might question his impartiality.

Id. at 206 (emphasis added).

- In In re Custody of R., 88 Wn. App. 746, 947 P.2d 745 (Div. II 1997), a Filipino Muslim mother left the Philippines with her young son, after a Shari'a court granted the father custody of the son as part of an Islamic law divorce proceeding. See 88 Wn. App. at 749-52. The mother and son settled in Washington State; the father located them and initiated proceedings in the Washington courts to compel a transfer of custody, under the putative authority of the Shari'a divorce decree. Id. at 752-53. During the Washington trial court proceedings, the court questioned the mother, and when the mother asked the judge whether he was "mad at" her, the court responded: "I don't like what you did. You took his son with the

intent of never telling him where he was. We don't like that as judges." Id. at 754-55 (emphasis added). Denying the mother's request for a continuance of a hearing for which she and her attorney had less than one day's notice (id. at 758-59), and refusing to admit evidence offered by the mother challenging the jurisdiction of the Shari'a court (id. at 755-58), the court granted the husband's petition (id. at 755).

This Court reversed, holding that the trial court erred in denying the continuance request and in refusing to consider the evidence proffered to challenge the jurisdiction of the Shari'a court. See id. at 756-59. The mother also asked for the matter to be remanded to another judge, and this Court agreed that a new judge should be assigned to assure the appearance of fairness:

> [W]e assume no actual bias. Nonetheless, justice must satisfy the appearance of impartiality. . . . Based on th[e] dialogue [between the mother and the court], coupled with the trial court's denial of [the mother's] requested continuance, we remand for a hearing before a different judge to promote the appearance of fairness.

Id. at 763-64.

2. The Record Reveals Ample Grounds to Suspect Bias, and to Conclude That Remand to a New Judge Is the Safest Course. Washington courts consider whether proceedings would appear impartial to "a reasonably prudent and disinterested person." Chicago, Milwaukee, St. Paul & Pac. R.R. Co. v. Washington Human Rights Comm'n (supra), 87 Wn.2d at 810. Hyundai respectfully submits that reasonably prudent and disinterested persons would conclude that a remand is necessary in this case to assure the appearance of impartiality, for several reasons.

a. Judge Johnson Expressed "Pain" Over Reversal of Her Judgment. As a purely prophylactic matter, Hyundai moved to bar Dr. Burton from reprising his impromptu role at the first trial of seat belt design expert. See (CP 1190-93) (motion to exclude). Incredibly, Magana opposed, and when the matter came before Judge Johnson, her statements disclosed that the issue of Dr. Burton's seat belt design testimony remained a sore subject:

> The second motion argued is regarding Dr. Burton. I quite frankly find it rather painful to review this particular issue, but I do need to go back and review and was not able. I also have had some illness problem this week and was not able to make as thorough a review of that issue as I would have liked to do prior to coming to court today. So we'll take a further look at the transcripts and information presented in connection with that particular issue prior to ruling.
>
> There do seem to be some differences in that there is a different witness, but it is an area that, in light of the Court of Appeals' ruling, I would be very hesitant to step into that area without a very clear understanding of where we are on that issue.

VRP (Dec. 15, 2005) 100:4-17 (emphasis added). Moreover, her expressed willingness to see "differences" between the issue immediately before her, and the circumstances that caused the Court of Appeals to vacate and remand for a new trial on liability, suggests a continuing unwillingness to acknowledge the justice of the Court of Appeals' decision to order a second trial.

b. Judge Johnson Expressed Hostility Toward Corporations Generally, and in the Very Discovery Context That Became the Heart of the Sanctions Dispute. Just two weeks after acknowledging her "pain" at having to address again the very issue that undid the judgment on the first jury's verdict, Judge Johnson declared her belief that

corporations as a class attempt to frustrate the truth-seeking process of discovery. On December 30, 2005, Judge Johnson heard argument as to whether Hyundai had provided an adequate CR 30(b)(6) representative on certain issues. When Hyundai's counsel attempted to place the issue in the context of his auto liability litigation experience, the court interjected:

> Now, this Court does not have the experience that counsel referred to here in terms of automobile litigation. I don't know what the pattern and practice is in the interview in terms of responding to such discovery requests. But it does appear to me very clearly from other types of litigation involving corporations that there is a pattern here, as I've described, of a very, very broad request, and every attempt to narrow it to the very most narrow.

VRP (Dec. 30, 2005) 17:16-24 (emphasis added).

This comment establishes that Judge Johnson had formed "a preconceived adverse opinion" that corporations as a class are guilty of obstructing the discovery process; such an opinion is quintessential evidence of bias. See, e.g., In re Borchart, 57 Wn.2d 719, 722, 359 P.2d 789 (1961) (a judge is biased or prejudiced when he or she has "a preconceived adverse opinion with reference to [a previous cause], without just grounds or before sufficient knowledge"). Moreover, Judge Johnson made the comment just one week after Magana filed a motion for default, based on a charge of impermissible narrowing of responses to discovery -- precisely the behavior Judge Johnson believed a common practice by corporate defendants.

c. During the Evidentiary Hearing, Judge Johnson Repeatedly Manifested Willingness to Assume Hyundai and Its Counsel Were Engaged in Improper Conduct. Judge Johnson repeatedly manifested, during the course of the evidentiary hearing on Magana's

sanctions motion, a willingness to believe Hyundai and its counsel were engaged in conduct designed to frustrate the purpose of that hearing:

- Judge Johnson Accused Hyundai's Counsel and a Witness of Manufacturing Scheduling Difficulties. In the few days leading up to the hastily scheduled evidentiary hearing on sanctions, Hyundai's counsel scrambled to make its witnesses available to testify. Hyundai had submitted a declaration from former Washington Supreme Court Justice Phil Talmadge, in response to a declaration plaintiff submitted from former Washington Supreme Court Justice Robert Utter. Both declarations addressed what constitutes reasonable conduct in the course of discovery, and the obligations of parties and their counsel during the course of the discovery process. See (CP 2651-54) (Utter); (CP 3252-61) (Talmadge).

Magana demanded that Justice Talmadge be made available for examination. During the hearing on Magana's motion for an evidentiary hearing, held on Friday, January 13, Hyundai's counsel represented to the court that Justice Talmadge had an oral argument before this Court on the morning of Wednesday, January 18. VRP (Jan. 13, 2006) 83:11-86:4. Hyundai therefore requested that Justice Talmadge be allowed to testify on Wednesday afternoon, and Judge Johnson agreed to that accommodation. VRP (Jan. 13, 2006) 84:2-85:25.

When the parties next appeared, on the morning of Tuesday, January 17, to begin the evidentiary hearing, Hyundai's counsel explained he had been mistaken about Justice Talmadge's schedule -- the oral argument was in fact on Thursday morning, not Wednesday morning. VRP (Jan. 17,

2006) 4:17-22 & 5:5-6. Counsel took responsibility for that error, and apologized to the court for misremembering the date of the oral argument. VRP (Jan. 17, 2006) 5:5-6, 7:8-11, 12:17-24, 12:25-13:3, 13:16-18. But Judge Johnson refused to accept the explanation, and expressed her suspicion of a more sinister motive on the part of counsel and Justice Talmadge:

> [THE COURT]: I'm certainly willing to be flexible in terms of scheduling, but with all the factors that we have to work with here, I'm not sure whether people are trying to make him [Justice Talmadge] as unavailable as possible or if he's trying to put the Court down low on the list of his priorities as far as appearing here or what the schedules of the attorneys are. So, perhaps we can start with the idea as to what the Court's schedule is, what we need to do to accomplish our purposes here. We'll reasonably -- this hearing was not scheduled until Friday afternoon, and so certainly it's caused a great inconvenience to witnesses as well as, apparently, counsels' schedule and so on. I can certainly attempt to work with that, but I think I need to know what we can do to make these attorneys available, these witnesses available, within everybody's schedule as reasonably as possible.
>
> MR. KING: Your Honor, if I could --
>
> THE COURT: Somehow I don't feel like that's the effort that is being made here, so.

VRP (Jan. 17, 2006) 14:17-15:12 (emphasis added).

- Judge Johnson Accused Hyundai's Counsel of Employing the Honorific Title of a Former Member of the Washington Supreme Court for Improper Purposes. Immediately before suggesting that Hyundai's counsel and Justice Talmadge were engaged in trumping up scheduling difficulties, Judge Johnson challenged the legitimacy of Hyundai referring to the former justice by the title "Justice":

> THE COURT: Well, my head is spinning here. I feel in some ways that we're deferring in our schedule here to the individual we're referring to as Justice Talmadge. I don't think he is a justice anymore.

MR. KING: No, he's a former -- it's an honorary --

THE COURT: I think we can refer to him as Mr. Talmadge. He's an attorney at this point.

VRP (Jan. 17, 2005) 14:3-9. Moreover, Judge Johnson went on to make clear that her unwillingness to grant Talmadge the benefit of this honorific reflected her willingness to ascribe improper motives to Hyundai's counsel's employment of the title:

[MR. KING]: My concern with Justice Talmadge -- with Phil Talmadge -- is -- and I use that honorific like we do for somebody who was a government official, a colonel in the army, what have you -- is that --

THE COURT: Somehow I have a feeling it's not used accidentally here in this context, but that's just a comment from the Court.

VRP (Jan. 17, 2005) 18:20-19:2.[52]

- Judge Johnson Accused Hyundai of Providing Illegible Copies of Documents to Plaintiff's Counsel and the Court, While Hyundai's Counsel Enjoyed the Use of Legible Versions of the Same Documents. On the second day of the evidentiary hearing, Judge Johnson criticized Hyundai for placing a watermark across the face of OSI records produced in compliance with the court's November 2005 production order, and ordered Hyundai to provide a set with the watermark removed. See

[52]Judge Johnson never objected to the parties referring to Robert F. Utter, plaintiff's expert on the standards for reasonable conduct during the course of discovery, as "Justice" Utter, and herself used the honorific regarding Justice Utter, both in oral rulings and written findings and conclusions. See VRP (Jan. 20, 2006) 18:6-8; (CP 5329) (FOF No. 54).

VRP (Jan. 18, 2006) 1:1-14.[53] When Hyundai's counsel attempted to explain the reason for the watermark (to assure compliance with protective orders), Judge Johnson interrupted and reiterated her directive to Hyundai to produce a set of the documents without the watermark. VRP (Jan. 18, 2006) 1:17-3:6. And while doing so,[54] Judge Johnson accused Hyundai's counsel of working with copies of the documents without the watermark, while forcing the court and opposing counsel to use the watermarked copies. See VRP (Jan. 18, 2006) 3:9-10 ("I would assume that counsel for Hyundai are not using similarly stamped copies"). In response, Hyundai's counsel assured the court that Hyundai's lawyers were also using the watermarked form of the documents. VRP (Jan. 18, 2006) 3:11-12.

d. Judge Johnson's Rulings on Reconsideration Suggest an Inability to Consider Evidence and Argument Presented by Hyundai With the Requisite Open Mind. In her oral ruling on Magana's sanctions motion, Judge Johnson lamented the fact that Hyundai had not provided her evidence of any industry standard concerning what constitutes a "claim." Hyundai then submitted testimony from William Boehly, who helped draft federal auto safety regulations that contemplate

---

[53]The previous day, Mr. Lawrence Baron, Magana's OSI expert, had accused Hyundai of using the watermark to try to impede the discovery process itself. See VRP (Jan. 17, 2006) 144:7-11.

[54]Hyundai complied fully, and both watermarked and nonwatermarked versions of the documents at issue are included in the record on appeal. To assist the Court in evaluating this issue, Hyundai has included both the original watermarked and the supplemental nonwatermarked versions of the Martinez and McQuary consumer hotline reports (Exs. 31 and 32), as part of Exs. G and H, respectively, of the Appendix to this Brief.

the meaning of "claim," and Peter Donnelly, an automotive industry in-house counsel with extensive experience responding to auto products liability OSI discovery requests, to demonstrate that Hyundai's interpretation of "claim" was reasonable. See § II.K, supra, at 48-49 (describing evidence on reconsideration).

In denying reconsideration, Judge Johnson stated that Hyundai's new evidence did not change her mind on any of her findings. (CP 5902) (Order at 2, ¶ 2). She offered no explanation for why evidence, of precisely the kind she had indicated would be relevant on the meaning of "claim" issue, was no longer persuasive. This Court cannot have confidence that, if Judge Johnson is ordered to reconsider, she will in fact prove open-minded in a fashion she most decidedly was not when the reconsideration issues were first before her. Moreover, the question of an open mind has particularly grave implications for this case, as literally dozens of evidentiary motions, the resolution of which will profoundly shape the course of the second trial, remain to be decided.[55]

---

[55]Hyundai has prepared a chart (Exhibit D to the Appendix) showing the outstanding motions at the time the court issued its default. One such motion is Magana's motion to strike certain litigation crash tests. See (CP 2728-31). Hyundai believes the results of these tests disprove Magana's claim that he was the belted front-seat passenger and that Angela Smith was the unbelted back-seat passenger. See (CP 4566) (Hyundai's Opposition to Plaintiff's Motion to Strike Litigation Crash Tests at 15). Should the jury determine that plaintiff was indeed seated in the back seat, it will need not reach the question of whether an allegedly defective front seat design caused plaintiff's injuries. The admissibility of this test, as well as several other of the matters left unresolved at the time of default, will require the most considered exercise of discretion to resolve the matter correctly.

e. Judge Johnson's Acceptance of WSTLA's "Judge of the Year" Award Independently Compels Remand to a New Judge. On July 19, 2006, Judge Johnson accepted the award for "Judge of the Year" from the Washington State Trial Lawyers Association. See WSTLA "Trial News," Vol. 42, No. 1 at 17 (Sept. 2006); Johnson Judge of the Year: State Trial Lawyers Honor Her for Role in Hyundai Case, The Columbian, July 20, 2006, 2006 WLNR 12504631.[56] WSTLA's "Trial News" newsletter states that Judge Johnson was "nominated for actions in the finest tradition of the bench, upholding the integrity of the civil justice system and its role in the truth-seeking process." The Columbian's report identified one of Magana's lawyers as the attorney who nominated Judge Johnson for the award, and its headline specifically attributed the award to her role in the present case. Mr. Don Jacobs, identified in the WSTLA newsletter and The Columbian as the presenter of the award (given, along with several others, at a WSTLA luncheon), was quoted by The Columbian as saying that (unnamed) attorneys had "lauded" her default judgment against Hyundai as "courageous," but that in Jacobs' view the decision was "just Johnson being Johnson," adding that Judge Johnson's "'not going to get intimidated.'"

Judges have an ethical obligation to avoid conduct that gives an appearance of bias. Here, a trial judge, after defaulting two defendants for discovery violations and awarding the plaintiff a multimillion dollar default judgment, accepted an award as judge of the year in which she

[56]The Court may take judicial notice of the content of these publications, under ER 201.

issued her default rulings, and for which she was nominated by counsel for the party to whom she awarded the default judgment. And the judge did so while the defendants were appealing that judgment, and with full knowledge that the Court of Appeals could very well reverse and remand for a second time. See VRP (Feb. 2, 2006) 67:13-68:15 (colloquy between Judge Johnson and Hyundai's counsel, in which the court acknowledges that the Court of Appeals "may reach different conclusions than this court has reached").

It would have been a simple matter for the trial court, upon receiving her nomination or the award itself, to have written an open letter to the Washington State Trial Lawyers Association declining the award, precisely to avoid any appearance of bias. Instead, Judge Johnson accepted the award, and traveled to Seattle to receive it and be celebrated for it. With all due respect, Hyundai cannot see how this conduct can be squared with assuring the appearance of fairness for future trial court proceedings in this case, and submits this conduct alone compels a remand to a new judge.

C. The Trial Court's Grant of Prejudgment Interest Should Be Reversed.

Washington trial courts are vested by the state constitution with the power to fashion equitable remedies, see Wash. Const. art. IV, § 6, which has been construed to be "as broad as equity and justice require." Agronic Corp. of Am. v. deBough, 21 Wn. App. 459, 463-64, 585 P.2d 821 (1978) (quoting 27 Am. Jur. 2d Equity § 103 (1966), currently found at 27A Am. Jur. 2d Equity § 99 (1996)). The Court of Appeals held in Colonial Imports v. Carlton Northwest, Inc., 83 Wn. App. 229, 921 P.2d 575 (1996), that

Washington courts have authority to disallow interest, even on liquidated claims and even when interest is granted by statute. See id. at 232. The court held that the right to prejudgment interest is not absolute, and that a trial court may suspend prejudgment interest during periods of unreasonable delay in completing litigation that is attributable to claimants. Id.

In Colonial Imports, the party claiming prejudgment interest was "responsible for the time spent on [the other party's cross-appeals] because Colonial led the trial court into the error of applying the preponderance of the evidence standard with respect to equitable estoppel." Id. at 576. Colonial Imports is squarely on point. Here, Magana's counsel invited clear error at the first trial by urging the trial court not to tell the jury that a portion of Dr. Burton's testimony had been stricken. That was a manifestly unreasonable position at the time, for as this Court noted: "It is error for the jury to consider evidence that the court either has not admitted or has stricken." Magana, 123 Wn. App. at 315-16 (citing, inter alia, State v. Brown, 139 Wn.2d 20, 24, 983 P.2d 608 (1999), and State v. Hanna, 123 Wn.2d 704, 711, 871 P.2d 135 (1994)). Had counsel either not wrongfully introduced Dr. Burton's testimony, or after the testimony was (belatedly) stricken resisted the temptation to persuade the court not to tell the jury that the evidence had been stricken, this case would not have been sent for back for retrial, because this Court affirmed the trial court on all other grounds. Hyundai should not be penalized for successfully pursuing appellate relief from plain error invited by Magana's counsel.

D. The Smiths Should Not Play a Role in the Retrial of This Case.

In the first appeal, the Smiths challenged the trial court's judgment on several issues, all of which this Court rejected in affirming the judgment against the Smiths. Consistent with that affirmance, this Court limited the remand for a new trial to liability issues regarding the occupant restraint system. If Hyundai is not found liable on retrial, the Smiths will be liable for the entire judgment. If Hyundai is found liable on retrial, Hyundai and the Smiths will be subject to joint and several liability, because Magana is a "fault-free" plaintiff. See, e.g., RCW 4.22.070(1)(b).

The only role the Smiths could play at a retrial is to dispute the allocation of fault between them and Hyundai. That role would be irrelevant if Hyundai committed not to pursue a cross-claim for contribution. Without the threat of a cross-claim for contribution, the Smiths would have no interest in the allocation of fault between them and Hyundai. The Smiths' assets are limited to a $25,000 insurance policy, so Magana will collect the entire judgment from Hyundai, even if Hyundai should be found only one percent liable. See (CP 5463) (CR 54(b) Findings ¶¶ 12-13). Given those circumstances, Hyundai is willing to dismiss any cross-claim for contribution it might have against the Smiths, if Hyundai is found liable on retrial. Hyundai therefore asks this Court to direct the trial court to order that the Smiths play no role in any retrial, upon Hyundai's dismissal of its cross-claim against the Smiths for contribution within 30 days of issuance of the mandate and restoration of the trial court's jurisdiction.

V.

CONCLUSION

This Court should reverse the findings of willful discovery violations and the default judgment, and remand to a new judge for a jury trial on the merits. In the alternative, this Court should vacate the default judgment and remand to a new judge for further proceedings on the "claim" and prejudice issues, but with directions that sanctions imposed (if any) may not extend to a default judgment.

RESPECTFULLY SUBMITTED this 29th day of September, 2006.

LANE POWELL PC

By Michael B King
Michael B. King
WSBA No. 14405
John B. Schochet
WSBA No. 35869
Attorneys for Appellants Hyundai Motor America and Hyundai Motor Company

MILLER NASH LLP

#14405

By M B King for
Jeffrey D. Austin
OSBA No. 83142
Heather K. Cavanaugh
WSBA No. 33234
Attorneys for Appellants Hyundai Motor America and Hyundai Motor Company

APPENDIX

EXHIBIT A	Findings of Fact and Conclusions of Law
EXHIBIT B	Chart re: Jeffrey D. Austin Declaration and Exhibits
EXHIBIT C	Chart re: Documents Listed in Findings of Fact and Conclusions of Law
EXHIBIT D	Chart re: Pending Motions at Time of 01/20/06 Sanctions Ruling
EXHIBIT E	Letter from P. O'Neil to J. Austin Dated April 26, 2001
EXHIBIT F	Letter from J. Austin to P. O'Neil Dated July 11, 2001
EXHIBIT G	Exhibit #31 – L. Martinez (extracts from watermarked and non-watermarked exhibits)*
EXHIBIT H	Exhibit #32 – L. McQuary (extracts from watermarked and non-watermarked exhibits)*

* The only portions removed from exhibits are photographs. All text remains unaltered.

EXHIBIT A

Hyundai's assignments of error to the trial court's February 15, 2006 findings of fact and conclusions of law are noted in yellow highlights on a copy of the findings constituting this exhibit. This copy of the findings is the electronic version circulated by the trial judge to all parties via email on February 15. A comparison of this document to the signed version in the Clerk's Papers confirms that it is identical in all respects except for the absence of a signature. Hyundai has inserted page numbers corresponding to the Clerk's Papers pagination for the signed version, which appears at CP 5311-28.

Hon. Barbara D. Johnson

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

JESSE MAGAÑA,

Plaintiff,

v.

HYUNDAI MOTOR AMERICA; HYUNDAI MOTOR COMPANY; and RICKY and ANGELA SMITH, husband and wife,

Defendants.

NO. 00-2-00553-2

FINDINGS OF FACT AND CONCLUSIONS OF LAW RE: DEFAULT JUDGMENT

Pursuant to various motions filed by the parties and based upon the pleadings of record, identified herein, and the evidentiary hearing which this Court held on January 17, 18, 19 and 20, 2006, the Court hereby makes the following Findings of Fact and Conclusions of Law in granting the plaintiff's motion for default judgment against the Hyundai defendants.

FINDINGS OF FACT

I. Procedural History and Materials Reviewed

1. This Court has presided over this case on a pre-assigned basis since filing of the Complaint on February 8, 2000, with the first order entered on February 22, 2000. The Court

200 Second Avenue West
Seattle, WA 98119-4204
STRITMATTER KESSLER WHELAN WITHEY COLUCCIO Tel: 206-448-1777

presided over all pre-trial hearings and trial in June-July 2002. This Court also presided over all hearings since remand from the Court of Appeals by Amended Mandate received April 11, 2005.

2. The Court is familiar with the facts of this accident, with the proof adduced by the plaintiff in support of his liability and causation and damages case, with the defenses offered by the defendants, and with the testimony of all of the witnesses who testified in the first trial. The record is extensive, the Superior Court file consisting at this time of 22 volumes over 600 pleadings, plus several hundred exhibits.

3. The Court reviewed pleadings, heard oral argument and conducted an evidentiary hearing on Plaintiff's Motion for Sanctions Pursuant to CR 37(b) and (d) concerning discovery violations alleged by the plaintiff to have been committed by the Hyundai defendants in this case.

4. In particular, the Court has read and reviewed the following pleadings, declarations and exhibits in making these Findings of Fact and Conclusions of Law:

A	Motion To Compel Discovery of Other Similar Incidents from Defendants Hyundai Motor Company ("HMC") and Hyundai Motor America ("HMA") and Certification of Counsel re: Compliance Conference Declaration of Paul Whelan Declaration of Stephen Syson	Filed: 10-27-05
B	Hyundai Motor America and Hyundai Motor Company's Opposition to Plaintiff's Motion To Compel Declaration of Jeffrey Austin Declaration of David Blaisdell	11-2-05
C	Plaintiff's Reply to Defendants Hyundai Motor America and Hyundai Motor Company's Opposition to Plaintiff's Motion To Compel Discovery of Other Similar Incidents Declaration of Alisa Brodkowitz	Filed: 11-4-05
D	Hyundai Letter re Proposed Order	Dated 11-9-05
E	Order Shortening Time and authorizing Plaintiff's Motion to Enter Order Hearing (Proposed)	11-10-05

200 Second Avenue West
Seattle, WA 98119-4204
STRITMATTER KESSLER WHELAN WITHEY COLUCCIO Tel: 206-448-1777

F	Plaintiff's Letter concerning Entry of a Discovery Order	Dated: 11-14-05 Filed: 11-18-05
G	Hyundai's Letter Response	Dated: 11-16-05
H	Order Granting Plaintiff's Motion to Compel Defendant Discovery of Other Similar Incidents From Defendant Hyundai Motor Company and Hyundai Motor America	Granted: 11-18-05
I	Defendants Hyundai Motor America and Hyundai Motor Company's Motion for Relief From November 18, 2005 Order Granting Plaintiff's Motion to Compel	12-1-05
J	Plaintiff's Opposition to Hyundai's Motion for Relief From the Court's Order Compelling Production of Other Similar Incidents	12-14-05
K	Motion To Compel Defendant Hyundai's Testimony on Other Incidents Declaration of Peter O'Neil	Filed: 12-21-05
L	Defendants Hyundai Motor America and Hyundai Motor Company's Opposition to Plaintiff's Motion to Compel filed December 20, 2005 Declaration of Jeffrey D. Austin in Support of Opposition to Plaintiff's Motions to Compel filed December 20, 2005	12-28-05
M	Plaintiff's Reply -- Motion to Compel Defendant Hyundai's Testimony on Other Incidents	Filed 12-29-05
N	Order Granting Plaintiff's Motion to Compel Defendant Hyundai's Testimony on Other Incidents	Granted: 12-30-05
O	Plaintiff's Motion For Sanctions Pursuant To CR 37(b) and (d) Memorandum In Support Of Motion For Sanctions Pursuant to CR 37 Declaration of Paul W. Whelan In Support of Motion for Sanctions for Discovery Abuse Declaration Peter O'Neil in Support of Motion for Sanctions Declaration of Lawrence Baron Regarding Other Similar Incidents Declaration of Justice Robert Utter in Support of Plaintiff's Motion for Imposition of Sanctions Declaration of Thomas J. Greenan in Support of Plaintiff's Motion for Sanctions Declaration of Joseph Lawson Burton, M.D. Declaration of Stephen Syson	Filed: 12-23-05
P	Memorandum of Hyundai Motor America and Hyundai Motor Company in Opposition to Plaintiff's Motion for Sanctions Declaration of Jeffrey D. Austin in Opposition to Motion for Sanctions Declaration of Heather K. Cavanaugh in Opposition to Motion for Sanctions Declaration of Michael B. King in Opposition to Motion for Sanctions Declaration of David D. Swartling in Opposition to Motion for Sanctions	1-6-06

		Declaration of Philip A. Talmadge in Opposition to Motion for Sanctions Declaration of William E. Stewart in Opposition to Motion for Sanctions Declaration of David Blaisdell in Opposition to Motion for Sanctions Declaration of Thomas M. Bullion in Opposition to Motion for Sanctions Declaration of Thomas N. Vanderford in Opposition to Motion for Sanctions	
	Q	Plaintiff's Reply Brief in Support of Motion for Sanctions Reply Declaration of Peter O'Neil Re: Plaintiff's Motion for Sanctions Reply Declaration of Alisa Brodkowitz in Support of Plaintiff's Motion for Sanctions Reply Declaration of Rita T. Williams	Filed: 1-11-06
	R	Plaintiff's Motion And Memorandum To Convene Evidentiary Hearing (Including Witnesses) Re Plaintiff's Motions For Sanctions Pursuant To CR 37 Declaration of Michael E. Withey in Support of Plaintiff's Motion to Convene Evidentiary Hearing	Filed 1-6-06
	S	Hyundai Motor America and Hyundai Motor Company's Opposition to Plaintiff's Motion to Convene Evidentiary Hearing Re Motion for Sanctions	1-11-06
	T	Plaintiff's Reply Re: Motion to Convene Evidentiary Hearing	Filed: 1-12-06

5. This Court presided over the evidentiary hearing into the sanctions issue from January 17 – 20, 2006, considered all of the pleadings and declarations set forth in the preceding paragraph and heard the following live witnesses who testified at the hearing:

- Jerry Greenan
- Larry Baron
- Nikki Holcomb
- Jesse Magaña
- David Swartling
- Thomas Vanderford

II. Discovery Sought and Responded To by Hyundai Demonstrates Numerous Violations of Discovery Obligations by Hyundai

6. In his sanctions motion, plaintiff alleges a number of discovery violations which are summarized in a handout provided to the Court during closing argument and made a part of the record. (Exh. 48) The Court finds the violations alleged by plaintiff on this chart have been proven and that the roadblocks placed by defendants on the plaintiff's right to obtain discovery were real. These violations have occurred over a period of time beginning in May of 2000 and continued through the hearing with respect to the *Acevedo* claim. Although finding all the violations alleged have been proven, and the totality of the circumstances is a factor, the most serious violations, upon which the court primarily bases the imposition of sanctions, are those violations specifically discussed herein.

7. The first discovery violation involves requests for production and interrogatories which were propounded by the plaintiff and responded to by the defendants.

8. In Request for Production No. 20, the plaintiff asked: "Pursuant to Civil Rule 34 attach or produce, according to the above instructions, copies of any and all documents including but not limited to complaints, answers, police reports, photographs, depositions or other documents relating to complaints, notices, claims, lawsuits or incidents of alleged seat back failure on Hyundai products for the years 1980 to present."

9. The following response was made and certified as truthful by Mr. Austin on behalf of Hyundai Motor America. "HMA objects to Request No. 20 on the grounds it is overly broad and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objections, HMA further responds that there have been no personal injury or fatality lawsuits or claims in connection with or involving the seat or seat back of the Hyundai Accent model years 1995 to 1999."

200 Second Avenue West
Seattle, WA 98119-4204
STRITMATTER KESSLER WHELAN WITHEY COLUCCIO Tel: 206-448-1777

10. In Interrogatory No. 12 the question was asked: "Identify with name and model number, all Hyundai vehicles that used the same or substantially similar right front seat as the 1996 Hyundai Accent."

11. The defendants' answer was: "The 1995 to 99 model year Hyundai Accent used the same or substantially similar right front seat as the 1996 Hyundai Accent. No other Hyundai model automobiles used the same or substantially similar design for the right front seat as the 1996 Hyundai Accent."

12. The response of Hyundai Motor America to Request For Production No. 20 was false. There were a substantial number of seat back failure claims and incidents that were reported to Hyundai involving the Accent model year 1995 to 1999 and other Hyundai vehicles. The legal department of Hyundai was involved in these reports and claims. They should have been produced.

13. The answers to RFP 20 and Interrogatory No. 12 were also evasive and misleading. Hyundai's responses attempted to reframe the issue and unilaterally narrow the discovery sought. Defense counsel withheld discoverable documents and sought no clarification or reformulation of his request from plaintiff's counsel and did not seek a protective order under CR 37(a). Only after plaintiff's counsel demonstrated to the Hyundai defendants that the Elantra seat was identical did the defendants concede a similarity.

14. At the time the answer to RFP 20 was made by Hyundai Motor America, the Martinez (Exhs. 5 and 31) and McQuary (Exhs. 6 and 32) claims were outstanding, involved years 1995-1999 Hyundai Accents, and had already been reported to Hyundai and its legal department. The Salizar claim (Exh. 30) was identified as an Accent on the claim document.

The Martinez, McQuary and Salizar claims were not provided to plaintiff by Hyundai Motor America and should have been.

15. After the answer to RFP 20 in May of 2000, an answer that was not accurate, Hyundai failed to supplement (as is their obligation under CR 26) the answer regarding the following seat back failure claims that were brought to Hyundai's attention after the initial answer of RFP 20: Wagner (Exh. 36), Bobbitt (Exh. 37), Pockrus (Exh. 38), Powell (Exh. 39) and Whittiker (Exh. 40). Each of these claims involved alleged seat back failures in the Hyundai Accent model years 1995-1999. All were reported to Hyundai prior to trial in June 2002, with the exception of Whittiker, which was reported in July, 2002. None were provided to plaintiff when they became known to Hyundai. These other incidents and accompanying documentation should have been provided because these reports directly contradicted Hyundai's prior answer that there were no such claims.

16. Another discovery violation is related to Interrogatory No. 12 to Hyundai Motor America and No. 11 to Hyundai Motor Company. These interrogatories asked Hyundai Motor America and Hyundai Motor Company to identify other Hyundai seats that were substantially similar to the 1996 Accent seat. The Elantra seat was a substantially similar seat to the Accent, but Hyundai did not identify it as such in 2000 or 2001. As a result, the answer to Request For Production No. 20 is misleading; the answer should have as well included the Elantra as well as the Accent.

17. After remand from the Court of Appeals, plaintiff requested defendants update their discovery responses by letter dated September 13, 2005. (O'Neil Decl., Exh. 6). In response, an October 25, 2005 letter by Mr. Austin provides as follows: "I am enclosing two claims relating to seat back failures. The first is a complaint filed in July of 2002, referred to as the Bobbit

200 Second Avenue West
Seattle, WA 98119-4204
STRITMATTER KESSLER WHELAN WITHEY COLUCCIO Tel: 206-448-1777

complaint. The second is correspondence dated September 8, 2000, regarding a claim of Matthew Dowling. The complaint letter makes reference to a 1985 Hyundai Excel. In fact, the claim involved an Elantra and apparently involved a driver's seat. Other than the claim of Mr. Magana, these are the only seat back failure claims relating to either the 1995 Hyundai Accent or the 1992 to 1995 Hyundai Elantra." O'Neil Decl., Exh. 7.

18. These answers were simply false. Numerous claims were received that now reveal that the answers given by the defendants related to seat back OSIs were false. Note: the term "OSIs" refers to other similar incidents. This is a term commonly used in products liability litigation, and appears throughout the record and these findings.

19. Hyundai defendants acknowledge at least two discovery violations, including the failure to provide plaintiff the sled test result and failure to produce the *Acevedo* claim, an excerpt of which is attached as Exhibit 2 to the O'Neil declaration, despite a November 18, 2005 Order compelling its production.

20. With respect to the answer to RFP 20 set forth above in paragraph 10, Hyundai has not affirmatively acknowledged the answer denying there were any "claims" was false. However, Hyundai has not presented any factual or legal basis for the court to conclude the answer was correct, or incorrect due to some reasonable excuse.

21. As explanation of the response, during the sanctions hearing Hyundai submitted the Proposed Stipulation Concerning Hyundai's Response to Plaintiff's Request for Production No. 20 (Clerk's document #612A). It states as follows: "In responding to this RFP, Hyundai directed a diligent search for all legal complaints (lawsuits) and all attorney demand letters (claims) in connection with or involving the seat or seat back of the Hyundai Accent, model years 1995 to 1999, with the intention that any such legal complaints or attorney demand letters

200 Second Avenue West
Seattle, WA 98119-4204
STRITMATTER KESSLER WHELAN WITHEY COLUCCIO Tel: 206-448-1777

would be produced to plaintiff. Because no such legal complaints or attorney demand letters were found, HMA answered by stating there were none." This pleading appears to indicate Hyundai's response that there were no "claims" was intended to refer only to attorney demand letters, although this limitation was not stated or otherwise disclosed to plaintiff.

22. In response to questions at the hearing, Hyundai's corporate counsel Thomas Vanderford explained the search for documents in response to plaintiff's RFP 20 was limited to the records of the Hyundai legal department. He stated no effort was made to search beyond the legal department, as this would have taken an extensive computer search.

23. Mr. Vanderford is not admitted to practice law in the State of Washington. He is admitted *pro hac vice* in this case. When asked if he had read the *Washington States Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 858 P.2d 1054 (1993) (Fisons)* decision, Mr. Vanderford indicated "parts of it." In *Parks v. Hyundai Motor America, Inc.*, 258 Ga.App. 876, 575 S.E.2d 673 (Ga. Court of Appeals 2002), a case in which Mr. Vanderford represented Hyundai at the trial court, Hyundai's response to discovery requests was found to be inadequate. After the case was remanded by the appellate court, a motion to compel was granted and Hyundai produced over 36 responsive OSIs. (Declaration of Rita Williams) The similarity of circumstances of the *Parks* case, Mr. Vanderford's testimony and the inadequate production of documents in this case, indicate a pattern of lack compliance with discovery obligations as required under Washington law.

24. There is no legal basis for limiting a search for documents in response to a discovery request to those documents available in the corporate legal department. This would be the equivalent of limiting the response in *Smith v. Behr Process Corp.*, 113 Wn.App. 306, 54

200 Second Avenue West
Seattle, WA 98119-4204
STRITMATTER KESSLER WHELAN WITHEY COLUCCIO Tel: 206-448-1777

P.3d 665 (2002) to a search for chemical tests which were on record in the corporate legal office, without disclosing that the search was so limited.

25. Additionally, the record is clear the legal department at Hyundai worked closely with the Consumer Affairs Department with respect to customer complaints and claims, including product liability claims. The vehicle owners' manual directed customers to call the Consumer Affairs number. As discussed in more detail in Section III, in some instances, after receiving the call, the Consumer Affairs Department referred the claim to the legal department, which directed an investigation of the claim and/or provided direction to Consumer Affairs regarding the claim. In cases included in the record, a form denial letter, which was clearly developed by legal counsel, was sent to the customer.

26. Mr. Vanderford testified no record was maintained in the legal office of this activity. As head of the products liability section, he was familiar with this process and supervised attorneys involved in this process. A search limited to the corporate legal office, which did not seek or disclose records from claims which originated with the Consumer Affairs Department, even though many of the claims involved the legal department, was not a diligent search.

27. Hyundai had the obligation not only to diligently and in good faith respond to discovery efforts, but to maintain a document retrieval system that would enable the corporation to respond to plaintiff's requests. Hyundai is a sophisticated multinational corporation, experienced in litigation. A search of computer records for documents requested by plaintiff, even if voluminous in nature, is standard operating practice of attorneys practicing in the products liability field. In fact, Hyundai did not object to the request as burdensome. The false answer to RFP 20 was without reasonable excuse or explanation.

28. As noted in paragraph 19 above, Hyundai acknowledges failing to produce documents concerning the *Acevedo* claim. These documents had not been produced by the time of the sanctions hearing. Mr. Vanderford explained this failure of production by stating he did not personally handle the case, and although aware of it, did not recall the allegations included a seat back claim. The *Acevedo* claim is a filed lawsuit which included allegations of collapse of the driver's seat back, with injuries to the child seated behind the driver (O'Neil Decl., Exh. 2). This case is highly relevant to plaintiff's claim.

29. Failure to produce the *Acevedo* claim is a discovery violation, conceded by Hyundai. However, the significance of the failure of production goes beyond failure to produce a responsive claim. The testimony of Mr. Vanderford that it was not produced because he did not recall the seat back claim, indicates production of discovery by Hyundai, at least in part, depended on the personal recollection of the attorney litigating the case. This is clearly not an adequate document retrieval system. The court concludes failure to produce the *Acevedo* claim casts doubt on whether all responsive documents have been produced.

30. Hyundai relied extensively during the hearing and in argument on a theory that an agreement had been reached between counsel in which plaintiff abandoned the request for disclosure of seatback failures prior to trial. Hyundai's argument is based upon correspondence and the declaration of Mr. Austin. This argument does not explain the original responses, but seeks to explain Hyundai's conduct after July of 2001.

31. It is common for attorneys to correspond and "meet and confer" regarding discovery requests (Testimony of David Swartling). CR 26 (i) requires counsel to confer prior to bringing motions to the court regarding discovery. Counsel in this case did confer and

200 Second Avenue West
Seattle, WA 98119-4204
STRITMATTER KESSLER WHELAN WITHEY COLUCCIO Tel: 206-448-1777

correspond regarding discovery issues. The parties disagree, however, as to whether there was an agreement as argued by Hyundai.

32. In his letter of April 26 of 2001, Mr. O'Neil (O'Neil Declaration, Exh. 4) reiterated the plaintiff's request for additional information on seat back OSIs (other similar incidents). The letter states: "Request for Production No. 20 and 21 ask for documents relating to other incidents where people have been injured by seat back collapse or by the airbag in a Hyundai vehicle. Hyundai's response seeks to rewrite the request so that it applies only to people who were injured in a manner identical to Mr. Magana. That is not Hyundai's prerogative, and the request should be answered as written." *Id.*

33. Mr. Austin, in his Declaration, asserts that he responded to Mr. O'Neil's April 26, 2001 letter by letter dated July 11, 2001.

34. Mr. Austin states in his declaration (paragraph 20) that it was his "understanding" that Mr. O'Neil was no longer pursuing documents relating to seatback failures in his letter. But his declaration does not state that Mr. O'Neil and he had even discussed this "understanding", let alone that Mr. O'Neil had agreed to it. Moreover, the very next paragraph (21) in his declaration states that he had memorialized his "understanding" reached with Mr. O'Neil in his letter of July 11, 2001. This letter did not memorialize any such understanding; it is silent on whether any agreement or understanding (that Mr. O'Neil was no longer seeking documents related to seat back failures) was ever reached. Furthermore, Mr. O'Neil, in his declaration, flatly denied having reached any such agreement or understanding to forego discovery of seatback OSI's.

35. Based upon this Court's review of all the available evidence, the Court finds Hyundai's claim of an agreement to take the seat back OSI issue "off the table" is not persuasive. The Court concludes there was no such agreement. Taking into account the false premises

200 Second Avenue West
Seattle, WA 98119-4204
STRITMATTER KESSLER WHELAN WITHEY COLUCCIO Tel: 206-448-1777

created by the defendants' initial discovery responses, the Court finds there was no abandonment by Plaintiff of the pursuit of discovery with respect to seat back failures at any time. The fact the plaintiff focused on certain discovery issues does not indicate in an affirmative manner that the plaintiff ever abandoned his request for obtaining evidence of other seat back failures. It would be unreasonable, and not supported by the totality of the evidence, to conclude Plaintiff abandoned the issue of seatback failure which was the central issue of the trial.

36. If truthful and complete answers had been provided by defendants, the OSI materials that are now before the Court would have led to substantial additional questions and a significant amount of additional discovery.

III. The Seat Back Failure Reports Are Claims and Went to the Heart of Plaintiff's Case

37. Although not argued at the conclusion of the hearing, Hyundai may be asserting the OSI evidence of seat back failures which was not disclosed by Hyundai until late 2005 and early 2006 were not "claims." As noted above in paragraphs 22 – 23, Hyundai indicated the response of "no claims" actually meant no attorney demand letters which were maintained in the records of the Hyundai legal department. There is no support in the record that such a limited definition of "claims" was a reasonable or good faith response to plaintiff's discovery requests.

38. Steve Johnson, Hyundai manager of engineering and design analysis, testified as Hyundai's CR 30(b)(6) designee. Mr. Johnson testified as follows: A: "Let me define a claim. That's if the customer sends in the additional information from the document request package, that information is reviewed typically by an attorney... Q: At any rate, the attorneys take a look at this data when somebody makes a claim for an injury? A: When they make a claim, yes." Deposition of Steve Johnson, Exh. 3, at p. 34 -35.

200 Second Avenue West
Seattle, WA 98119-4204
STRITMATTER KESSLER WHELAN WITHEY COLUCCIO Tel: 206-448-1777

39. David Swartling, witness for Hyundai, testified regarding his definition of a claim. Mr. Swartling testified a claim occurs when a consumer or person is injured or has a problem, and the person, either on his own behalf or through a lawyer, states the problem and makes a demand, requests a remedy. (A verbatim transcript is not yet available, although the Court has reviewed the video record.)

40. **Martinez Claim.** Exhibits 5 and 31 set forth the Martinez claim. This was a claim involving a 1995 Accent, based on an accident which occurred in February of 1998. Exhibit 31 consists of 37 pages of material that were not provided in response to Request for Production No. 20. It includes a demand letter (50053246). These materials were forwarded to the legal department (50053144). The Hyundai summary refers to receiving a response back from the legal department, stating that this claim was to be handled in a specific manner (50053145). According to Mr. Steve Johnson and Mr. Swartling this was, by any sense of the term, a claim. The claim alleges that the seats failed (50053143), the car was a total loss (50053145). Mr. Martinez had a passenger. The materials include photos of the failed seat (50053273). Clearly this information, which was not disclosed from May of 2000 until January 6, 2006, was material and significant to the issues in the case.

41. **McQuary Claim.** Exhibits 6 and 32 are the McQuary claim which had been made to Hyundai Motor in March of 1998. Exhibit 32 consists of 21 pages of material. It includes photos of the collapsed seat (50053281-91). The language "claim" is used throughout the materials. Again, there is reference to the legal department (**50053147**). Quoting from this exhibit: "Received response from legal on PIR (Preliminary Investigation Report) legal department needs. Additional information from customer to complete evaluation" (50053147). A PIR was performed in this case. *Id.* The PIR was defined by Mr. Johnson in his deposition (at

p. 34). It is a document that is sent out at the direction of an attorney to an investigator to investigate a vehicle. Again this was clearly a claim. A remedy was requested by Mr. McQuary and Hyundai legal department was involved.

42. Martinez and McQuary are just two of the claims involved; they are claims that were wrongfully and willfully not provided in Hyundai's initial response of May 2000.

43. **Wagner Claim.** Further information that was not provided because Hyundai willfully failed to supplement their initial responses to RFP 20, includes the Wagner claim (Exh. 36). Exhibit 36 consists of 8 pages including color photographs of seats (50048162). The Hyundai legal department was involved; a PIR (preliminary investigative report) was performed (50048158). The claimant indicates that both front seats reclined backwards (50048157). The file includes a letter (50053170), a form of which is in Exhibit 8 to this hearing (50053300). This letter is a form letter sent by Hyundai to claimants in claims involving the collapse of a seatback. It states, "Thank you for your recent correspondence. We have thoroughly reviewed your comments and indeed regret the circumstances you have experienced. Based upon information provided in severe rear impacts, such as this one, seats are designed to provide ride-down to the occupants. If seats were rigid, severe injuries could result during this accident. The seats deform rearwards during the crash providing ride-down, as they were designed to do. We apologize for any inconvenience this situation may have caused. We do need to advise you, this is Hyundai's final decision in this matter. Should you have any concerns that you want to discuss with us, please feel free to write or call our consumer assistance center. We have your comments on file in our office and appreciate your taking the time to write to us." (50053170) The legal department informed the Consumer Affairs of their decision regarding the claim (50048158).

200 Second Avenue West
Seattle, WA 98119-4204
STRITMATTER KESSLER WHELAN WITHEY COLUCCIO Tel: 206-448-1777

44. Hyundai developed a form letter to respond to claims of seatback failure, as sent in the Wagner claim. Various versions of this form letter appear in a number of the materials which were provided to the Court. This Court finds it difficult to imagine the contents of any document which would more directly relate to the issues in this case than this form letter, particularly with respect to a failure to warn claim plaintiff may have added. Form letters are developed when there are enough claims or requests that the same or similar language can be used in responding to such requests. In fact, in one of the claims (Exh. 8, the claim of Penelope Trudeau), not only did the customer receive a version of the form letter, she also received an article Automotive Seat Design Concepts for Occupant Protection, authored by David Blaisdell, defendants' identified expert in this case (50053301-11). This is relevant material that was available in Hyundai's files and should have been produced.

45. With respect to the issue of whether these are "claims," the use of the specific terminology is not necessary or determinative. However, it is noteworthy that in many of the seat back OSI records the term "claim" is used by both the people in Hyundai consumer affairs and the letters that are sent to the customers. The letters refer to such wording as, "we must deny this claim" (see Exhs. 8, 5005330). The advice from the legal department, as noted in the consumer affairs division, often refers to the denial -- it says "deny claim" Exh. 34 (50048156) The claimant him or herself often uses the term "claim" as in, "I filed a claim." Exh. 9 (5053185).

46. **Harper Claim.** Exhibit 9, which involves a 1995 Accent, the Harper claim, includes 55 pages of material. The materials include documentation that Hyundai told the customer that the customer should retain the seat and that failing to do so could expose her to claims for spoliation of evidence (50053187). It would be unreasonable to conclude that

200 Second Avenue West
Seattle, WA 98119-4204
STRITMATTER KESSLER WHELAN WITHEY COLUCCIO Tel: 206-448-1777

someone in consumer affairs would have advised the claimant of a concern about spoliation of evidence without the advice of an attorney. Again the letter says "must deny this claim." *Id.* This customer, Harper, was very concerned about this claim. She attached a number of additional materials. In fact, there was a supporting document from a fireman who observed the location of people in the vehicle and the failure of the seat (50053193), a circumstance strikingly similar to this case. Again, in light of the facts of this case, these documents went to the heart of the plaintiff's claim.

47. The foregoing are but a few examples of discoverable material which was not provided. There were many others. Each of the cases cited above in paragraphs 38 to 47 involve a Hyundai Accent for the model years 1995-1999. HMA specifically and falsely denied there were any seat back failure claims for these models.

48. **Urice Claim.** The Urice claim, at Exhibit 34, is a 29-page document which involved a Hyundai Elantra, which Hyundai eventually conceded had a similar seat to the Accent. This claim was not disclosed in Mr. Austin's October 25th of 2005 letter, which was intended by its terms to include both the Accent and the Elantra. The Urice claim includes the following information: The claim that the driver's seat failed causing injury not only to the driver, but her son who was seated in the back seat (50048155). The passenger seat also failed, according to her information. *Id.*. Again the legal department was involved, a PIR was ordered and information was received on June 22nd of 2000, received from LCAAR, which is the acronym referring to the legal department, stating "deny claim" (50048156). It states that the customer should be told that the seats were designed to perform that way. *Id.*

49. Since the Urice case involved both a passenger and a person in the back seat, these claims are highly material to the issues in the case. The legal department clearly knew of these

200 Second Avenue West
Seattle, WA 98119-4204
STRITMATTER KESSLER WHELAN WITHEY COLUCCIO Tel: 206-448-1777

claims. The legal department was actively involved in the claims. The legal department knew they were claims by any definition including that of Hyundai's CR 30(b)(6) managing agent, Steven Johnson. The word "claims" appears frequently in the records. The directions from the legal department were, quote, "deny claim." A letter was sent to the customer which did, in fact, deny the claim (50053172). Hyundai knew the claim had been made regarding the collapse of seat backs in Accent vehicles and Elantra vehicles; and as ultimately came out, in many other vehicles as well.

50. With respect to the question of whether there were willful violations, the Court looked to the definition in *Smith v. Behr Process Corp.*, 113 Wn. App. 306, 54 P.3d 665 (2002). The definition is "without reasonable excuse." The Court is also cognizant of the difficult role of the Court in this matter. The *Fisons* case comments: "We recognize that the issue of imposition of sanctions upon attorneys is a difficult and disagreeable task for a trial judge. It is a necessary one if our system is to remain accessible and responsible."

51. There is a clear record in this case that establishes that Hyundai's discovery violations were made without reasonable excuse.

52. Hyundai and its legal department knew that there had been customer complaints and claims of incidents of seat back failure. Defendant knew that these happened in the Accent and Elantra, as well as other vehicles. Some of these complaints had been litigated. Most involved personal injuries. It was the duty of Hyundai to establish an adequate system to respond to discovery requests. Hyundai failed to establish such a system and failed to respond accurately to discovery requests. Hyundai unreasonably limited its search, and failed to supplement those answers that were incorrect.

200 Second Avenue West
Seattle, WA 98119-4204
STRITMATTER KESSLER WHELAN WITHEY COLUCCIO Tel: 206-448-1777

53. The Court finds that the violations were without reasonable excuse and were willful. In fact, because these violations involved directly false misrepresentations, these violations were egregious.

IV. Prejudice to Plaintiff and the Administration of Justice Is Manifest

54. All parties acknowledged agreement with the principles stated by Justice Robert Utter in his Declaration in Support of Plaintiff's Motion for Imposition of Sanctions:

> Discovery abuse strikes at the heart of the judicial system. When a party wrongfully fails to produce documents sought in discovery, that party interferes with the judicial system's ability to engage in the truth-seeking process. Discovery abuse unfairly hampers the presentation of the other party's claim, violates the jury's role and prevents an impartial decision on the merits. Public institutions are set up to protect and safeguard the public. They cannot tolerate fraud because it is inconsistent with the good order of society and unbalances the truth seeking process. Wrongdoing such as this is not just directed against a single litigant, but undermines all public institutions.

Utter Decl., at p.2.

55. Reasonable opportunity to conduct discovery is a fundamental part of due process of law. If disclosed in the 2000 to 2001 time frame, the information regarding other seat back failures in Hyundai vehicles would have been investigated and further evidence would have been developed by plaintiff. It would have been shared with, analyzed and discussed by plaintiff's experts, and used in cross-examination of defendants' experts. Plaintiff would have had the opportunity to contact witnesses and to preserve evidence and would have done so. Such evidence included the seats that would have been preserved both by witnesses (such as Ms. Nikki Holcomb who kept her seat until 2001 or later, but lost it thereafter). Customers were even directed by Hyundai to retain their seat in some of these cases. The plaintiff would most likely have added a failure-to-warn cause of action to his complaint in light of the evidence that Hyundai had knowledge of other seat back failures. Both experts Larry Baron (for plaintiff) and David Swartling (for defendant) testified to the amount of work it takes to investigate and

200 Second Avenue West
Seattle, WA 98119-4204
STRITMATTER KESSLER WHELAN WITHEY COLUCCIO Tel: 206-448-1777

prepare OSI evidence for trial. They testified that, in general, OSI evidence strengthens the plaintiff's case and undermines the defense's case. It is relevant on issues of notice to Hyundai of a defect, the existence of the defect itself, and causation.

56. Hyundai attorney Thomas Bullion indicated the critical importance of evidence of other similar incidents to a plaintiff's case in closing argument in another case:

> This is a real important point, I think in this case. He's not just saying that this – Ms. Brewster's Hyundai was defective, he's saying that every one of these 200,000 Hyundai Accents out there that have this same design are defective. But did he bring you a single – did Mr. Russell, did Mr. Syson bring you a single accident where somebody else has claimed a defect in this seat? Not one. If there was anything out there, if there was a problem with this design, with the design, this is elementary in these lawsuits, people bring in other claims where people have claimed they are defective, and they say, see here, there is a problem with the design. But he didn't do that, he can't. There is not any others because this is such an incredibly severe collision.

Closing argument of Thomas Bullion III in *Brewster v. Hyundai*. Exh. 49.

57. The issues in this case not only concerned the failure of the passenger seat back and restraint system, but also who was seated where in the vehicle. Plaintiff's case relies upon the theory that plaintiff was seated in the front passenger seat, which is disputed by defendant Hyundai. In addressing these issues, the parties called occupant kinematics experts. These experts relied upon all information that was available, including information as to injuries to plaintiff and passenger Angela Smith.

58. Information that is now disclosed in the exhibits for the sanctions hearing includes information regarding injuries to passengers that would have been relevant to this issue. Significantly, this information bears directly upon the occupant kinematics issue, which is essential to the plaintiff's case. Information regarding injuries directly relates to expert opinions in the case.

200 Second Avenue West
Seattle, WA 98119-4204
STRITMATTER KESSLER WHELAN WITHEY COLUCCIO Tel: 206-448-1777

59. The product liability issue is central to the case and has been addressed earlier in terms of seat back failures. Information now disclosed is highly relevant to this issue.

60. This Court has determined plaintiff is severely prejudiced in going into a second trial. All agree that it is very difficult if not impossible to adequately investigate and develop the OSI information at this late date. Mr. Baron and Mr. Swartling both so testified. A significant time for follow-up discovery, including against Hyundai, would have been necessary. Even if this time were now available, evidence has been lost and much of the information is stale.

61. As noted by Judge Foscue in the transcript of decision in *Smith v. Behr Process Corp.*, plaintiff has been prejudiced in settlement negotiations. The materials now disclosed strengthen plaintiff's case and weaken Hyundai's defenses, significant factors in settlement. Resolution of cases through settlement is a significant aspect of the court system. O'Neil Decl., Ex 22 at p. 7 – 8.

62. These discovery violations have a significant negative impact on the administration of justice. It would be the duty of the Court to make a vigorous and thorough review of OSI evidence in order to consider how it is admitted in trial, if at all, and how it can be referred to by expert witnesses. Parties would have the opportunity to discuss this evidence with their experts and develop information to argue these issues before the Court. The Court would do its best with all of the available information to determine whether or not this information would be properly before the jury. It is virtually impossible for the Court to conduct that type of vigorous inquiry with respect to any incidents that now are so old that witnesses cannot be contacted, evidence cannot be obtained, and plaintiff has not had the opportunity to investigate these OSIs.

63. There has been substantial prejudice to the plaintiff in the failure to disclose this information as earlier requested.

200 Second Avenue West
Seattle, WA 98119-4204
STRITMATTER KESSLER WHELAN WITHEY COLUCCIO Tel: 206-448-1777

64. The Court concludes that the observations of Judge Foscue in *Smith v. Behr Process Corp.* are applicable here:

> "I conclude that the discovery violations complained of suppressed evidence that was relevant because it goes to the heart of plaintiff's claims and it supports them. It's relevant in that it goes to the heart of defenses raised by Behr because it undermines them. The discovery violations here prevented the plaintiffs from doing what the law allows them to do and that's to follow up on leads from developed facts. They were off in one direction when they should have been working in another, and the only reason they didn't know – the only reasons is is that they didn't know the other existed."

113 Wn.App. at 325.

V. Sanctions

65. When the Court finds discovery violations, it is necessary that the Court impose appropriate sanctions. It would be error for the Court to not impose sanctions. It would be error for the Court to impose inadequate sanctions. The issue of seat back failure is at the absolute center of this case and the heart of plaintiff's claims.

66. It is the function of the Court to thoroughly examine all of the possible sanctions that could be imposed and to determine what is appropriate. Prior to argument, the court specifically requested counsel address the issue of what sanctions would be appropriate. A chart was provided by plaintiffs (Exh. 48), setting forth a range of possible sanctions, which was helpful in examination of this issue. The only sanction suggested by defendant was a continuance. The purpose of sanctions is to deter, punish, compensate, educate and insure that the wrongdoer does not profit from the wrong.

67. **Monetary Fine.** A monetary fine is a sanction considered by this Court. It would in some sense address the costs that have been incurred in connection with these proceedings regarding discovery violations and could serve the purposes of punishment and the other purposes of sanctions. It is very difficult to know what monetary amount would be appropriate

200 Second Avenue West
Seattle, WA 98119-4204
STRITMATTER KESSLER WHELAN WITHEY COLUCCIO Tel: 206-448-1777

in such case. Hyundai is a multi-billion dollar corporation. This is documented in Exhibit 23 to Peter O'Neil's declaration.

68. A monetary sanction would not in any way address the prejudice to the plaintiff or to the judicial system. Much of the OSI seat back failure evidence is irretrievable at this point, and there is no way that it can be adequately addressed by either the experts or by the Court or by a jury if it were to review it. A monetary fine would do nothing to serve the search for truth and justice, which is the purpose of this Court. The Court rejects this as an adequate sanction.

69. **Continuance.** The second possible sanction, which was the sole sanction proposed by defendants, is a continuance. Sanctions for discovery violations are not intended to reward the party who has committed the violations. Defendant Hyundai has sought a continuance in this case previously, which has been denied by the Court. The motion for a continuance would not remedy the staleness of the evidence in question; it would not remedy the difficulty of the Court in addressing these issues; it would involve further substantial costs to the parties in terms of analyzing the evidence with respect to their experts; it would involve substantial duplication of effort which had previously had been done in preparation and re-preparation for this trial. A continuance would only exacerbate that situation. It would not benefit the plaintiff, it would benefit the defendant. Therefore, a continuance is not an appropriate remedy.

70. **Other Sanctions Short of Default.** There are cases in which a number of other sanctions have been appropriate to the particular facts of the case. The Court ultimately determined that neither party was suggesting that other remedies would be particularly appropriate or workable in this case. The striking of counterclaims is a remedy provided in CR 37(b). There are no counterclaims in this case and many issues, such as the allegation of contributory fault by plaintiff, were already decided and affirmed by the Court of Appeals. The

200 Second Avenue West
Seattle, WA 98119-4204
STRITMATTER KESSLER WHELAN WITHEY COLUCCIO Tel: 206-448-1777

Court has analyzed whether it might be appropriate to admit into evidence the OSIs in some manner or to admit some of them. Proceeding to trial as scheduled would be highly prejudiced by the admission of some or all of the evidence which has now been disclosed. It would be difficult to discuss this evidence. Plaintiff has not had the time to develop it; it cannot be developed as to many of the facts and circumstances involved in OSIs of seat back failures. Hyundai has asserted the defendant should have the opportunity to challenge those OSIs, to conduct discovery and, at the very least, to examine the facts of those OSIs, and to address this newly disclosed information. Ultimately both plaintiffs and defendants agreed that admitting OSI evidence without examination or challenge would not be a workable or appropriate remedy in this case. Defense counsel Mr. King admitted in closing argument that taking the facts of the OSI seat back failures as established, one remedy referred to in CR 37, would be the same as or tantamount to ordering default judgment. The Court accepts this argument and agrees. It is therefore not an adequate or workable sanction.

71. **Default Judgment.** Following trial of this matter, the jury found plaintiff's damages to be $8,064,055.00. In determining which sanction to apply the Court took into account that a default judgment would result in a reinstatement of this prior substantial verdict. The remedy of default is not dependent upon the amount of potential verdict or in this case, actual damages verdict. However, it is a factor the Court does not set aside or disregard in considering what sanction is appropriate.

72. In *Smith v. Behr, supra,* the court affirmed the default judgment sanction, quoting from the trial court:

> When you consider the willfulness of the violation, it's the only appropriate exercise of discretion when you consider the centrality of the suppressed information, when you consider its interim nature, and that to follow up on it would require time, time that could have been allowed had it been disclosed when it should have been.

200 Second Avenue West
Seattle, WA 98119-4204
STRITMATTER KESSLER WHELAN WITHEY COLUCCIO Tel: 206-448-1777

Default is the only viable exercise of discretion when you consider the multiple, again, serious prejudice that this has caused to the plaintiffs, and when you consider the impacts of the violations on this Trial Court, and on the administration of Justice.

73. This Court reaches the same conclusion. The plaintiff and the trial process is so prejudiced that the only appropriate remedy, having carefully considered all of the lesser sanctions, is to grant the relief which is requested by the plaintiffs, and that is to enter a default judgment against Hyundai.

74. **Attorneys Fees and Costs.** The Court will award to the Plaintiff the fees and costs occasioned by the discovery violations herein in an amount to be determined at a later hearing. The plaintiff's counsel shall prepare a petition for fees and costs for the court to review in setting the amount of such award.

CONCLUSIONS OF LAW

1. In determining which discovery sanction to apply to this case the Court relied upon CR 37 and CR 26.

CR 37(d) provides:

> (d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Production or Inspection. If a party or an officer, director, or managing agent of a party or a person designated under rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take his or her deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for production of documents or inspection submitted under rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under sections (A), (B), and (C) of subsection (b)(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising the party or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

200 Second Avenue West
Seattle, WA 98119-4204
STRITMATTER KESSLER WHELAN WITHEY COLUCCIO Tel: 206-448-1777

The failure to act described in this subsection may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by rule 26(c). For purposes of this section, an evasive or misleading answer is to be treated as a failure to answer.

2. CR 37(b)(2) provides for the following sanctions at the discretion of the trial judge:

(A) An order that the matters regarding which the order was made or any other designated fact shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(C) An order striking our pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceedings or any part thereof, or rendering the judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as contempt of court the failure to obey any orders except an order to submit to physical or mental examination.

3. The Court relied upon the following cases, including the holdings explicitly set forth below, in its ruling on discovery violations and appropriate sanctions:

A. *Washington States Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 343-345, 858 P.2d 1054 (1993) (*Fisons*):

(1) [A] motion to compel compliance with the rules is not a prerequisite to a sanctions motion. *Fisons* at 345.

(2) The requirement of CR 26(g) to make "reasonable inquiry" in response to a discovery request is an "objective standard," not based solely upon subjective belief or good faith. *Fisons* at 343.

(3) In determining whether an attorney has complied with the rule, the court should consider all of the surrounding circumstances, the importance of the evidence to its proponent, and the ability of the opposing party to formulate a response or to comply with the request. *Id.*

(4) Discovery responses and objections must not be interposed to cause "unnecessary delay" or increase the costs of litigation. *Id.*

(5) "[I]intent need not be shown before sanctions are imposed." *Id.* at 345.

(6) "The sanction should insure that the wrongdoer does not profit from the wrong...The purpose of sanctions orders are to deter, to punish, to compensate and to educate." *Id.* at 356.

B. *Smith v. Behr Process Corp.*, 113 Wn. App. 306, 324, 325 54 P.3d 665 (2002).

(1) "When the trial court selects one of the " 'harsher remedies' " under CR 37(b), it must be apparent from the record that the trial court explicitly considered whether a lesser sanction would probably have sufficed,' and whether it found that the disobedient party's refusal to obey a discovery order was willful or deliberate and substantially prejudiced the opponent's ability to prepare for trial." *Id* at 325.

(2) "[A]s a default judgment for discovery violations raises due process concerns, the court must first find willfulness and substantial prejudice." *Id.*

(3) It is a party's "responsibility to set up a workable discovery system." *Id* at 328.

(4) "Due process is satisfied, however, if, before entering a default judgment or dismissing a claim or defense, the trial court concludes that there was a willful or deliberate refusal to obey a discovery order, which refusal substantially prejudices the opponent's ability to prepare for trial." *Id* at 330.

C. *Casper v. Esteb Enterprises, Inc.*, 119 Wn. App. 759, 82 P.3d 1223 (2004).

(1) A violation of the discovery rules is willful if it is done without reasonable excuse.

D. *Gammon v. Clark Equipment Co.*, 38 Wn. App. 274, 686 P.2d 1102 (1984)

(1) A "de minimis sanction in a case such as this would plainly undermine the purpose of discovery." *Id* at 282.

4. The Court concludes that Hyundai and its counsel committed numerous discovery violations, which were willful, deliberate, direct and egregious. CR 37, CR 26.

200 Second Avenue West
Seattle, WA 98119-4204
STRITMATTER KESSLER WHELAN WITHEY COLUCCIO Tel: 206-448-1777

5. The Court concludes that defendant's failure to produce information regarding the *Acevedo* complaint was willful and violated this Court's order of November 18, 2005, and raises concerns about whether all responsive documents have been produced.

6. The Court concludes that these discovery violations caused substantial prejudice to Plaintiff and to the judicial system.

7. The Court concludes based upon the Findings of Fact set forth above, and after considering all of the lesser sanctions described in CR 37, that only the entry of default is an appropriate sanction; that no other sanction is both workable and serves the purposes and goals of sanctions being imposed.

8. The Motion for Default Judgment is GRANTED; judgment for Plaintiff and against the Hyundai defendants will be entered.

DONE IN OPEN COURT this 15th day of February, 2006.

HONORABLE BARBARA D. JOHNSON

200 Second Avenue West
Seattle, WA 98119-4204
STRITMATTER KESSLER WHELAN WITHEY COLUCCIO Tel: 206-448-1777

EXHIBIT B

EXHIBIT B

INDEX TO JEFFREY AUSTIN DECLARATION EXHIBITS

DESCRIPTION	CP NO.	DATE
Declaration of Jeffrey D. Austin in Opposition to Motion for Sanctions – Docket #541	3703-3713	01/06/06
Exhibit A: Plaintiff's First Interrogatories and Request for Production to Defendants [to Hyundai Motor America only], dated February 10, 2000	3714-3732	02/10/00
Exhibit B: Defendant Hyundai Motor America's Response to Plaintiff's First Interrogatories and Requests for Production to Defendants, dated April 5, 2000	3733-3756	04/05/00
Exhibit C: Defendant Hyundai Motor America's First Interrogatories [to Plaintiff], dated April 12, 2000	3757-3767	04/12/00
Exhibit D: Defendant Hyundai Motor America's First Interrogatories With Answers [by Plaintiff], dated May 5, 2000	3768-3779	05/05/00
Exhibit E: Plaintiff's Second Interrogatories and Requests for Production to Defendant Hyundai Motor America, dated May 3, 2000	3780-3793	05/03/00
Exhibit F: Defendant Hyundai Motor America's Response to Plaintiff's Second Interrogatories and Requests for Production to Defendants, dated June 5, 2000	3794-3805	06/05/00
Exhibit G: June 9, 2000 Letter from P. Whalen to J. Austin	3806-3809	06/09/00
Exhibit H: June 29, 2000 Letter from J. Austin to P. Whelan	3810-3815	06/29/00
Exhibit I: Defendant Hyundai Motor America's Supplemental Response to Plaintiff's Second Interrogatories and Requests for Production to Defendants, dated November 21, 2000	3816-3828	11/21/00
Exhibit J: [Plaintiff's] Amended Supplemental Responses to Defendant Hyundai Motor America's First Set of Interrogatories, dated August 17, 2000	3829-3834	08/17/00

DESCRIPTION	CP NO.	DATE
Exhibit K: Plaintiff's First Interrogatories and Requests for Production to Defendant Hyundai Motor Company, dated September 14, 2000.	3835-3855.	09/14/00
Exhibit L: Plaintiff's Third Interrogatories and Requests for Production to Defendant Hyundai Motor America, dated October 3, 2000.	3856-3865.	10/03/00
Exhibit M: Plaintiff's Fourth Requests for Production of Documents to Defendant Hyundai Motor America, dated October 6, 2000.	3866-3873.	10/06/00
Exhibit N: Plaintiff's [sic] Second Requests for Production of Documents to Defendant Hyundai Motor Company, dated October 6, 2000.	3874-3880.	10/06/00
Exhibit O: Defendant Hyundai Motor America's Response to Plaintiff's Third Interrogatories and Requests for Production of Documents, dated November 21, 2000.	3881-3894.	11/21/00
Exhibit P: Defendant Hyundai Motor Company's Response to Plaintiff's First Interrogatories and Requests for Production, dated November 21, 2000.	3895-3919.	11/21/00
Exhibit Q: November 29, 2000 Letter from J. Austin to P. O'Neil regarding the protective order.	3920-3922.	11/29/00
Exhibit R: February 6, 2001 Letter from J. Austin to P. O'Neil.	3923-3925.	02/06/01
Exhibit S: April 26, 2001 Letter from P. O'Neil to J. Austin	3926-3928.	04/06/01
Exhibit T: May 1, 2001 Letter from P. O'Neil to J. Austin	3929-3931.	05/01/01
Exhibit U: May 3, 2001 Letter from P. O'Neil to J. Austin	3932-3934.	05/03/01
Exhibit V: May 4, 2001 Letter from P. O'Neil to J. Austin	3935-3937.	05/04/01
Exhibit W: July 11, 2001 Letter from J. Austin to P. O'Neil	3938-3940.	07/11/01
Exhibit X: Chart listing the complaints and demand letters Hyundai produced	3941-3944.	
Exhibit Y: August 20, 2001 Letter from J. Austin to P. O'Neil	3945-3946.	08/20/01
Exhibit Z: June 4, 2001 Letter from P. O'Neil to J. Austin	3947-3948.	06/04/01

DESCRIPTION	CP NO.	DATE
Exhibit AA: June 19, 2001 Letter from J. Austin to P. O'Neil	3949-3951	06/19/01
Exhibit BB: August 7, 2001 Letter from J. Austin's paralegal, E. Brickner-Schulz, to P. O'Neil	3952-3953	08/07/01
Exhibit CC: August 17, 2001 Letter from P. O'Neil to J. Austin	3954-3955	08/17/01
Exhibit DD: Plaintiff's Third Supplemental Responses to Defendant Hyundai Motor America's First Set of Interrogatories, dated September 17, 2001	3956-3968	09/17/01
Exhibit EE: August 30, 2001 Letter from J. Burton, M.D. to P. Whelan	3969-3976	08/30/01
Exhibit FF: November 6, 2001 Letter from P. O'Neil to T. Vanderford and J. Austin	3977-3979	11/06/01
Exhibit GG: November 8, 2001 Letter from P. O'Neil to T. Vanderford and J. Austin	3980-3985	11/08/01
Exhibit HH: November 8, 2001 Letter from J. Austin to P. O'Neil	3986-3987	11/08/01
Exhibit II: May 23, 2002 Letter from P. O'Neil to T. Vanderford and J. Austin	3988-3989	05/23/02
Exhibit JJ: May 24, 2002 Letter from J. Austin to P. O'Neil	3990-3991	05/24/02
Exhibit KK: May 24, 2002 Letter from P. O'Neil to J. Austin	3992-3993	05/24/02
Exhibit LL: May 24, 2002 Letter from P. O'Neil to J. Austin	3994-3995	05/24/02
Exhibit MM: May 28, 2002 Letter from J. Austin to P. O'Neil and J. Adlard	3996-3997	05/28/02
Exhibit NN: May 29, 2002 Letter from J. Austin to P. O'Neil	3998-4000	05/29/02
Exhibit OO: May 31, 2002 Letter from J. Austin to P. O'Neil	4001-4002	05/31/02
Exhibit PP: Motion to Compel Production of Video of FMVSS 301 Testing and Subjoined Declaration of Peter O'Neil dated May 22, 2002	4003-4011	05/22/02

DESCRIPTION	CP NO.	DATE
Exhibit QQ: Defendants Hyundai Motor Company and Hyundai Motor America's Opposition to Plaintiff's Motion to Compel Production of Video of FMVSS 301 Testing dated May 30, 2002	4012-4016	05/30/02
Exhibit RR: VRP Vol. II, June 3, 2002 page 172 and cover page	4018-4020	06/03/02
Exhibit SS: April 22, 2005 Letter from D. Vanderwood to D. Breeding, Clark County Superior Court	4021-4022	04/22/05
Exhibit TT: Trial Setting Notice dated May 23, 2005	4023-4024	05/23/05
Exhibit UU: June 17, 2005 Letter from J. Austin to P. Whelan and D. Foley	4025-4028	06/17/05
Exhibit VV: June 23, 2005 Letter from P. Whelan to J. Austin	4029-4030	06/23/05
Exhibit WW: September 13, 2005 Letter from P. O'Neil to J. Austin and T. Bullion	4031-4033	09/13/05
Exhibit XX: Defendants Hyundai Motor America and Hyundai Motor Company's Motion to Establish Pretrial and Discovery Deadlines, dated September 16, 2005	4034-4039	09/16/05
Exhibit YY: Plaintiff's Response to Defendant Hyundai Motor America and Hyundai Motor Company's Motion to Establish Pretrial and Discovery Deadlines, dated September 19, 2005	4040-4043	09/19/05
Exhibit ZZ: October 6, 2005 Letter from P. O'Neil to J. Austin and T. Bullion	4044-4046	10/06/05
Exhibit AAA: October 7, 2005 Letter from P. O'Neil to J. Austin and T. Bullion	4047-4048	10/07/05
Exhibit BBB: October 11, 2005 Letter from J. Austin to P. O'Neil	4049-4051	10/11/05
Exhibit CCC: October 25, 2005 Letter from J. Austin to P. O'Neil	4052-4060	10/25/05

DESCRIPTION	CP NO.	DATE
Exhibit DDD: Defendant Hyundai Motor America's Supplemental Response to Plaintiff's Interrogatory No. 12 and Request for Production No. 20, dated October 25, 2005	4061-4065	10/25/05
Exhibit EEE: Defendant Hyundai Motor Company's Supplemental Response to Plaintiff's Interrogatory No. 11 and Request for Production No. 20, dated October 25, 2005	4066-4070	10/25/05
Exhibit FFF: [Plaintiff's] Motion to Compel Discovery of Other Similar Incidents from Defendants HMA and HMC and Certification of Counsel Re: Compliance Conference, dated October 26, 2005	4071-4115	10/26/05

EXHIBIT C

EXHIBIT C

PLEADINGS REFERENCED BY TRIAL COURT IN FINDINGS OF FACTS AND CONCLUSIONS OF LAW

	DESCRIPTION	CP NO.	DATE FILED	DOCKET NO.
A	Motion to Compel Discovery of Other Similar Incidents from Defendants Hyundai Motor Company ("HMC") and Hyundai Motor America ("HMA") and Certification of Counsel re Compliance Conference	787-798	10/27/05	342
	Declaration of Paul Whelan	799-830	10/27/05	342 sub-joined
	Declaration of Stephen Syson	784-786	10/27/05	341
B	Hyundai Motor America and Hyundai Motor Company's Opposition to Plaintiff's Motion to Compel	909-918	11/02/05	349
	Declaration of Jeffrey Austin	903-908	11/02/05	348
	Declaration of David Blaisdell	889-902	11/02/05	347
C	Plaintiff's Reply to Defendants' Hyundai Motor America and Hyundai Motor Company's Opposition to Plaintiff's Motion to Compel Discovery of Other Similar Incidents	937-939	11/04/05	354a
	Declaration of Alisa Brodkowitz	940-955	11/04/05	354a subjoined
D	Hyundai Letter re Proposed Order	972-973	11/09/05 (dated)	359 attached
E	Order Shortening Time and Authorizing Plaintiff's Motion to Enter Order Hearing (Proposed)	*	11/10/05	*

	DESCRIPTION	CP NO.	DATE FILED	DOCKET NO.
F	Plaintiff's Letter concerning Entry of a Discovery Order	963-990	11/18/05 (dated 11/14/05)	359
G	Hyundai's Letter Response	3697-3698	11/16/05	540 exhibit
H	Order Granting Plaintiff's Motion to Compel Defendant Discovery of Other Similar Incidents from Defendant Hyundai Motor Company and Hyundai Motor America	961-962	11/18/05	358
I	Defendants Hyundai Motor America and Hyundai Motor Company's Motion for Relief From November 18, 2005 Order Granting Plaintiff's Motion to Compel	1018-1025	12/01/05	363
	**Declaration of Heather Cavanaugh	1026-1027	12/01/05	364
	**Declaration of T. Dowd	1028-1031	12/01/05	365
J	Plaintiff's Opposition to Hyundai Motor America and Hyundai Motor Company's Motion for Relief from November 18, 2005 Order Granting Plaintiff's Motion to Compel	1974-1975	12/14/05	441
K	Motion to Compel Defendant Hyundai's Testimony on Other Incidents	2249-2250	12/21/05	470
	Declaration of Peter O'Neil	2251-2264	12/21/05	471
L	Defendants' Opposition to Plaintiff's Motion to Compel filed 12/20/05	3084-3093	12/28/05	517
	Declaration of Jeffrey D. Austin in Support of Opposition to Plaintiff's Motions to Compel	3094-3122	12/28/05	518
M	Plaintiff's Reply to Motion to Compel Defendant Hyundai's Testimony on Other Incidents	3123-3131	12/29/05	520
N	Order Granting Plaintiff's Motion to Compel Defendant Hyundai's Testimony on Other Incidents	3169-3170	12/30/05	527

	DESCRIPTION	CP NO.	DATE FILED	DOCKET NO.
O.	Plaintiff's Motion for Sanctions Pursuant to CR 37(b) and (d)	2307-2308	12/23/05	478
	Memorandum in Support of Motion for Sanctions Pursuant to CR 37	2309-2346	12/23/05	479
	Declaration of Paul Whelan in Support of Motion for Sanctions for Discovery Abuse	2347-2350	12/23/305	480
	Declaration of Peter O'Neil in Support of Motion for Sanctions	2351-2645	12/23/05	481
	Declaration of Lawrence Baron Regarding Other Similar Incidents	2646-2650	12/23/05	482
	Declaration of Justice Robert Utter in Support of Plaintiff's Motion for Imposition of Sanctions	2651-2654	12/23/05	483
	Declaration of Thomas J. Greenan in Support of Plaintiff's Motion for Sanctions	2655-2662	12/23/05	484
	Declaration of Joseph Lawson Burton, M.D.	2667-2702	12/23/05	486
	Declaration of Stephen Syson	2663-2666	12/23/05	485
P.	Memorandum of Hyundai Motor America and Hyundai Motor Company in Opposition to Plaintiff's Motion for Sanctions	3199-3251	01/06/06	531
	Declaration of Jeffrey D. Austin in Opposition to Motion for Sanctions	3703-4115	01/06/06	541
	Declaration of Heather K. Cavanaugh in Opposition to Motion for Sanctions	3594-3702	01/06/06	540
	Declaration of Michael B. King in Opposition to Motion for Sanctions	3427-3593	01/06/06	539
	Declaration of David D. Swartling in Opposition to Motion for Sanctions	3262-3270	01/06/06	533
	Declaration of Phillip A. Talmadge in Opposition to Motion for Sanctions	3252-3261	01/06/06	532

	DESCRIPTION	CP NO.	DATE FILED	DOCKET NO.
	Declaration of William E. Stewart in Opposition to Motion for Sanctions	3271-3297	01/06/06	535
	Declaration of David Blaisdell in Opposition to Motion for Sanctions	3420-3426	01/06/06	538
	Declaration of Thomas M. Bullion in Opposition to Motion for Sanctions	3416-3419	01/06/06	537
	Declaration of Thomas N. Vanderford in Opposition to Motion for Sanctions	3298-3415	01/06/06	536
Q	Plaintiff's Reply Brief in Support of Motion for Sanctions	4850-4873	01/11/06	604
	Reply Declaration of Peter O'Neil Re: Plaintiff's Motion for Sanctions	4790-4820	01/11/06	600
	Reply Declaration of Alisa Brodkowitz in Support of Plaintiff's Motion for Sanctions	4661-4756	01/11/06	598
	Reply Declaration of Rita T. Williams	4757-4789	01/11/06	599
R	Plaintiff's Motion and Memorandum to Convene Evidentiary Hearing (Including Witnesses) re Plaintiff's Motions for Sanctions Pursuant to CR 37	3171-3184	01/04/06	528
	Declaration of Michael E. Withey in Support of Plaintiff's Motion to Convene Evidentiary Hearing	3185-3196	01/04/06	529
S	Hyundai Motor America and Hyundai Motor Company's Opposition to Plaintiff's Motion to Convene Evidentiary Hearing re Motion for Sanctions	4606-4614	01/11/06	589
T	Plaintiff's Reply re Motion to Convene Evidentiary Hearing	4877-4880	01/12/06	606
	Live testimony from Jerry Greenan, VRP 01/17/06, pp. 20-82	5029-5030	01/20/06	620

DESCRIPTION	CP NO.	DATE FILED	DOCKET NO.
Live testimony from Larry Baron, VRP 01/17/06, pp. 112-199.	5030	01/20/06	620
Live testimony from Nikki Holcomb, VRP 01/17/06, pp. 98-111.	5030	01/20/06	620
Live testimony from Jesse Magana, VRP 01/17/06, p. 89.	5030	01/20/06	620
Live testimony from David Swartling, VRP 01/18/06, pp. 10-81.	5030-5031	01/20/06	620
Live testimony from Thomas Vanderford, VRP 01/18/06, pp. 97-146.	5031	01/20/06	620

*** This two page document is not in the Clerk's Papers, nor is it on the docket.**

**** These two pleadings are not separately identified in the Findings of Fact and Conclusion of Law. They were filed with docket #363.**

EXHIBIT D

EXHIBIT D

PENDING MOTIONS AT TIME OF DEFAULT

DESCRIPTION	CP NO.	DATE FILED	DOCKET NO.
1. Magana's Motion re Jury Selection and Review of Pretrial Motions			
Magana's Note for Motion re Jury Selection and Review of Pretrial Motions	782-83	10/27/05	340
Magana's Memorandum	831-68	10/28/05	344
Smiths' Response to Memorandum	919-24	11/03/05	350
Hyundai's Response to Memorandum	931-36	11/03/05	353
2. Defendants Ricky and Angela Smith's Motions In Limine			
Smiths' First Motion: Exclusion of Evidence of Insurance Coverage or Plaintiff's Finances	2271-80	12/22/05	475
Smiths' Second Motion: Insurance and Settlement			
Smiths' Third Motion: No Reference that Defendants Have Failed to Testify and Witnesses Equally Available to Both Parties in this Case			
Smiths' Fourth Motion: Caution Plaintiff and Codefendant Hyundai's Witnesses not to Comment on Prior Experience of Accidents			
Smiths' Fifth Motion: Limitation of Plaintiff and Codefendant Hyundai to their Use of Conviction of Crime			
Smiths' Sixth Motion: Any Mention of Defendants Smiths' Law Firm Size or Multiple Location			
Smiths' Seventh Motion: Inadmissible Use of Traffic Offenses			
Hyundai's Opposition to Defendants Smiths' Motions In Limine	4365-66	01/06/06	574

DESCRIPTION	CP NO.	DATE FILED	DOCKET NO.
Magana's Response to Smiths' Motions in Limine	4238-40	01/06/06	552
3. Defendant Smiths' Motion for Introduction of Former Trial Testimony			
Defendants Smith's Motion	2281-2306	12/22/05	476
4. Magana's Motion and Memorandum in Support of Plaintiff's Motion in Limine to Exclude Evidence Argument or Exhibits Suggesting that Compliance with a Motor Vehicle Safety Standard is a Defense in a Civil Case			
Magana's Note for Motion	2710-11	12/23/05	489
Magana's Motion and Memorandum	2706-09	12/23/05	488
Hyundai's Opposition to Magana's Motion	4372-73	01/06/06	576
5. Magana's Motion and Memorandum in Support of Magana's Motion in Limine to Exclude Evidence Argument or Exhibits Suggesting that Compliance with a Motor Vehicle Safety Standard is a Defense in a Civil Case			
Magana's Note for Motion	2710-11	12/23/05	489
Magana's Motion and Memorandum	2706-09	12/23/05	488
Hyundai's Opposition to Magana's Motion to Exclude Evidence of Compliance with MVSS	4372-73	01/06/06	576

DESCRIPTION	CP NO.	DATE FILED	DOCKET NO.
6. Magana's Motion to Strike Litigation Crash Tests Not Similar and Not Helpful to Trier of Fact			
Note for Motion	2858-59	12/23/05	493
Magana's Motion	2712-35	12/23/05	490
Declaration of Peter O'Neil in Support	2736-2851	12/23/05	491
Declaration of Stephen Syson Regarding Crash Tests	2852-57	12/23/05	492
Hyundai's Opposition to Plaintiff's Motion	4552-72	01/06/06	586
Declaration of Jeffrey Austin in Support of Hyundai's Opposition	4573-4605	01/06/06	587
Declaration of Thomas McNish in Support of Hyundai's Opposition	4485-99	01/06/06	583
Declaration of David Blaisdell in Support of Hyundai's Opposition	4500-15	01/06/06	584
Declaration of John Habberstad in Support of Hyundai's Opposition	4516-51	01/06/06	585
Magana's Motion to Call Rebuttal Witnesses at Hearing on Motion	4177-79	01/06/06	548
Plaintiff's Reply	4821-31	01/11/06	601
Declaration of Stephen Syson in Support of Plaintiff's Motion	4874-76	01/11/06	605
7. Hyundai's Motion In Limine to Exclude Evidence of Dual Recliners in Hyundai Models Designed After 1996			
Hyundai's Citation	3078	12/23/05	511
Hyundai's Motion	2868-77	12/23/05	497
Magana's Response to Hyundai's Motion	4116-36	01/06/06	542

DESCRIPTION	CP NO.	DATE FILED	DOCKET NO.
Hyundai's Reply	4650-56	01/11/06	596
8. Hyundai's Motion In Limine to Exclude Improper Closing Arguments			
Hyundai's Citation	3079	12/23/05	512
Motion	2878-92	12/23/05	498
Magana's Opposition to Hyundai's Motion in Limine	4235-37	01/06/06	552
9. Hyundai's Motion In Limine to Exclude Inadmissible Character Evidence			
Hyundai's Citation	3080	12/23/05	513
Hyundai's Motion	2893-2918	12/23/05	499
Magana's Response	4137-43	01/06/06	543
Declaration of Paul Whelan Regarding Hyundai's Motion	4144-69	01/06/06	544
Declaration of Jesse Magana Regarding Character Evidence	4170-71	01/06/06	545
Hyundai's Reply	4657-60	01/11/06	597
10. Hyundai's Motion In Limine to Exclude Certain Testimony of the Defendants Smith and Dr. Barry T. Bates			
Hyundai's Citation	3081	12/23/05	514
Hyundai's Motion	2919-38	12/23/05	500
Magana's Opposition to Hyundai's Motion In Limine To Exclude Certain Testimony of Defendants Smith and Dr. Barry T. Bates	4172-74	01/06/06	546
Proposed Order Denying Hyundai's Motion	4175-76	01/06/06	547

DESCRIPTION	CP NO.	DATE FILED	DOCKET NO.
11. Hyundai's Motion In Limine to Exclude Unauthenticated Notes Regarding Seating Position in Hearsay Medical Records			
Hyundai's Citation	3082	12/23/05	515
Hyundai's Motion	2939-3055	12/23/05	501
Magana's Opposition	4180-87	01/06/06	549
Declaration of Alisa Brodkowitz in Support of Plaintiff's Opposition	4188-4203	01/06/06	550
Hyundai's Reply	4645-49	01/11/06	595
12. Hyundai's Multiple Motions In Limine:			
Hyundai's Citation	3083	12/23/05	516
Hyundai's Multiple Motions in Limine	3056-64	12/23/05	502
1. Other Defects, Shortcomings, Acts			
2. New or Different Defects			
3. Lay Witness Testimony on Injury Causation or Medical Science			
4. Subsequent Regulations Regarding Air Bags			
5. "Spirit" or "Intent" Interpretation			
6. Unspecified Defects			
7. Hyundai's Status as a Corporation			
8. Court Rulings and Findings			
9. Mention of "Exclusion" Evidence			
10. Informing the Jury of the Effect of its Answers			
11. Inflammatory References to Hyundai			
12. Conduct of Attorneys			
13. Speculation by Experts			

DESCRIPTION	CP NO.	DATE FILED	DOCKET NO.
14. Presence or Absence of a Corporate Representative			
15. Manufacture of the 1996 Hyundai Accent			
16. Result or Verdict			
17. Competitor Airbag and Seatback Systems			
18. Recall			
19. Any FMVSS a Inadequate or Unsafe			
20. Any FMVSS as a "Minimal" Standard			
21. Derogatory References Regarding the NHTSA			
22. Derogatory or Uncomplimentary News Reports or Articles Pertaining to Hyundai			
23. Testimony from Stephen Syson Regarding Biomechanics, Occupant Kinematics/Movement and Injury Causation			
24. Alleged Comments by Hyundai Experts or Employees on Unrelated Issues			
25. Expert Characterization of Fact Witnesses			
26. Violation of FMVSS			
27. Production or Stipulation			
28. Non-Testifying Experts or Consultants			
Proposed Order Granting Hyundai's Multiple Motions In Limine	3065-76	12/23/05	503
Magana's Opposition to Hyundai's Multiple Motions In Limine	4204-34	01/06/06	551
Defendants Smiths' Response to Hyundai's Motions in Limine	4435-47	01/06/06	580
13. Magana's Motion to Restore Omitted Testimony of Angela Smith			
Magana's Note for Motion	4349-50	01/06/06	565
Magana's Motion	4310-11	01/06/06	563

DESCRIPTION	CP NO.	DATE FILED	DOCKET NO.
Declaration of Paul Whelan in Support	4312-48	01/06/06	564
Hyundai's Opposition to Motion	4627-32	01/11/06	591
Declaration of Jeffery Austin in Opposition to Motion	4615-26	01/11/06	590
14. Magana's Motion re: Jury Questionnaire			
Magana's Requested Jury Questionnaire	4304-07	01/06/06	561
Note for Motion	4308-09	01/06/06	562
Magana's Note for Motion re Jury Questionnaire	*778-79*	*10/27/05*	*338*
15. Motion to Call Witness Rebuttal Witnesses at Hearing on Motion to Strike Litigation Crash Tests			
Magana's Motion	4177-79	01/06/06	548
16. Magana's Motion to Strike Hyundai's Exhibits with Expert Photographs Not Disclosed Prior to Close of Discovery			
Magana's Motion	4885-88	01/13/06	609
Hyundai's Opposition Magana's Motion	5018-22	01/18/06	616
Declaration of Heather Cavanaugh in Opposition to Magana's Motion	4995-5015	01/18/06	614
Declaration of Erika Boggs in Opposition to Magana's Motion	5016-17	01/18/06	615
17. ER 904 Filings			
Hyundai's Objections to Defendants Ricky and Angela Smith's ER 904 Notice	3153-54	12/30/05	522
Objections to Magana's ER 904 Notice	3155-61	12/30/05	524

DESCRIPTION	CP NO.	DATE FILED	DOCKET NO.
Defendants Smiths' Opposition to Plaintiff's ER 904 Submission	3162-66	12/30/05	525
18. Deposition Designations and Objections			
Magana's Response to Hyundai's Designation of Deposition and Trial Testimony	4279-82	01/06/06	556
Declaration of Paul Whelan in Support of Magana's Response	4283-92	01/06/06	557
Magana's Designation of Testimony of Johnson	4889-4946	01/17/06	610
Magana's Designation of Testimony of Kim Baek	4947-73	01/17/06	611
Hyundai's Objections to Magana's Deposition Designations and Response to Magana's and Defendants Smiths' Trial Testimony Designations	4367-71	01/06/06	575

EXHIBIT E

STRITMATTER KESSLER

SKWWC

WHELAN WITHEY COLUCCIO

April 26, 2001

RECEIVED
APR 2 8 2001
MILLER NASH LLP

Jeffrey Austin
Miller Nash
Attorneys at Law
3500 U.S. Bankcorp Tower
111 S.W. Fifth Avenue
Portland, OR 97204-3699

ATTORNEYS
Paul L. Stritmatter
Keith L. Kessler
Paul W. Whelan
Michael E. Withey
Kevin Coluccio
Brad J. Moore
Garth L. Jones
Ray W. Kahler
Peter O'Neil
Reed P. Schifferman

OF COUNSEL
Leonard W. Schroeter
Murray Kleist
al O'Neil

SEATTLE
200 Second Ave. W.
Seattle, WA 98119
(206) 448-1777
Fax (206) 728-2131

HOQUIAM
413 Eighth Street
Hoquiam, WA 98550
(360) 533-2710
Fax (360) 532-8032

www.skwwc.com

Reply to:
Seattle Office

Re: *Magaña v. Hyundai Motor Co.*

Dear Mr. Austin:

I understand that you are only in the office on a limited basis and won't be able to get to this immediately, however, I wanted to get started talking with you about document discovery. I should begin by thanking you for what I think is a good initial production of documents by Hyundai. However, there are some gaps in what was produced. Also, I have some disagreements about what was not produced by Hyundai Motor Company and wanted to get those on the table now.

Plaintiff's First Interrogatories and Requests for Production

Interrogatories 2 and 3 request information about the Board of Directors of Hyundai Motor Company and Hyundai Motor America. You have objected to the relevance of this information. It's an easy enough thing to produce and could lead to admissible evidence about information sharing between the two companies.

Interrogatory No. 7 requests that Hyundai Motor Company identify the person responsible for communicating with the National Highway Traffic Safety Administration regarding the safety of the Hyundai Accent. You have objected and claimed work product. As you know, the Hyundai Accent passenger bag was the subject of an investigation by NHTSA which involved a good deal of communication. We will limit our request to the person responsible for communicating with NHTSA about the passenger air bag on the Accent. It is hard to understand how this particular subject would be irrelevant since it was the passenger air bag that was responsible for Jesse Magaña's injuries.

Requests for Production 5, 6 and 7 from Plaintiff's Second Set of Requests for Production to Hyundai Motor Company request documents provided to NHTSA relating to the passenger side air bag on the 1995-1997 two-door Hyundai Accent. HMC has made a variety of objections to these requests for production. Obviously, the requests are calculated to lead to the discovery of admissible evidence and non-privileged documents

EXHIBIT S

should be produced. If you, in fact, have attorney-client privilege or work product claims, any withheld documents should be identified in a log.

Requests for Production 20 and 21 ask for documents relating to other incidents where people have been injured by seat back collapse or by the air bag in a Hyundai vehicle. Hyundai's response seeks to rewrite the request so that it applies only to people who are injured in a manner identical to Mr. Magaña. That is not Hyundai's prerogative, and the requests should be answered as written.

Second Set of Requests for Production to Hyundai Motor Company

As stated previously, we expect answers to Requests 5, 6 and 7 which relate to the NHTSA investigation. We also expect responses to Requests for Production 8 and 9. Request for Production 8 seeks documents relating to any statistical analysis comparing the Hyundai Accent passenger air bag field performance to other air bags. (That analysis was probably part of the NHTSA submissions and responsive to one of the preceding requests.) Request for Production 9 seeks all documents relating to pole impacts involving 1995-to-current model year Hyundai Accents. Since the Magaña accident began with a pole impact, that information is obviously relevant.

I am currently reviewing the documents that were produced. I will follow up with a letter requesting video and better quality photographs of certain tests, along with design information relating to certain test vehicles and/or components.

Let me know if you have any questions. I hope you have had a good recovery from your surgery. Thank you.

Sincerely,

PETER O'NEIL

PJO/dg

cc: Derek Vanderwood

EXHIBIT F

MILLER | NASH
LIMITED LIABILITY PARTNERSHIP | ATTORNEYS AT LAW

Miller Nash LLP
3500 U.S. Bancorp Tower
111 S.W. Fifth Avenue
Portland, OR 97204-3699
(503) 224-5858
(503) 224-0155 fax

4400 Two Union Square
601 Union Street
Seattle, WA 98101-2352
(206) 622-8484
(206) 622-7485 fax

1100 Riverview Tower
900 Washington Street
Post Office Box 694
Vancouver, WA 98666-0694
(360) 699-4771
(360) 694-6413 fax

Jeffrey D. Austin
Admitted in Oregon
austin@millernash.com
(503) 205-2483 direct line

July 11, 2001

VIA FACSIMILE AND U.S. MAIL

Mr. Peter O'Neil
Stritmatter Kessler Whelan
Withey Coluccio
200 Second Avenue West
Seattle, Washington 98119-4204

Subject: Jesse Magana v. Hyundai Motor America et al
Superior Court of Washington for Clark County
Case No. 00-2-00553-2

Dear Peter:

This letter follows up on our recent conversation regarding discovery. You identified four areas that you requested we respond to. Each area is discussed below.

1. Videotapes and photographs of crash testing. Pursuant to your request, my clients are determining the quantity of videotapes and photographs so that you can assess whether to request copies, or review the materials prior to selecting copies. I hope to be able to provide you with an estimate of the quantity by next Wednesday, July 18, 2001.

2. Crash tests. My clients are confirming that you have received all crash test documents that exist. Again, I hope to be able to provide you with that confirmation by next Wednesday, July 18, 2001.

3. Other claims relating to passenger side airbags in the Hyundai Accent. My client is assembling and will produce claims relating to aggressive or violent deployment of the passenger side airbag in the 1995-97 Hyundai Accent. We will not produce other types of airbag claims such as failure to deploy. Prior to producing the documents, we will require your agreement that the documents are subject to the protective order.

EXHIBIT W

4. NHTSA documents. My clients are assembling documents relating to this request. Once again, prior to producing the documents, we will require your agreement that the documents are subject to the protective order.

By agreeing to produce the above-referenced documents, we are not conceding that they are relevant to any claims in this case. We believe, and are confident that a judge will agree, that child airbag injuries and fatality claims have no relevance to the theory of causation you have identified. However, rather than get this issued resolved now at the discovery phase, we are content to wait until trial.

With our agreement to produce the above-referenced documents, we will have produced a significantly large volume of documents in response to your requests. I now want to schedule the depositions of your causation experts (accident reconstruction, biomechanical, etc.). Once we have had the opportunity to depose your experts and pinpoint what they will say about causation, our experts can review the case and will then be in a position to offer their opinions on causation. We would then be willing to offer our experts up for deposition. I want to accomplish this process by the fall, preferably early fall.

About a month ago, Paul Whelan asked me if my clients are willing to mediate this case. The are willing to mediate, but they do not believe mediation would be fruitful prior to deposing your experts. I suggest that we agree on a schedule for discovery of experts, followed by a date for mediation. Please let me know the availability of your experts for deposition during the first three weeks of September. I will then try to make our experts available for deposition in the last week of September and the first two weeks of October. We could then schedule the mediation for the end of October.

Very truly yours,

Jeffrey D. Austin

bcc: Mr. Tom Vanderford
Ms. Linda Eastman
AUSTIN:tac
File No.: 501500-0013
Doc ID: PDXDOCS:1199576.3

EXHIBIT G

(31)

File: 421220 - Status: X3 - VIN: KMHVF14N0SU166428 Model: Accent CX3 1995

MARTINEZ, LUCIANO
15181 VAN BUREN BLVD # 26
RIVERSIDE, CA 92540

File	Type	Line	Comment Contents
421220	O	1	2-6-98 (JHANSEN) CUST STATES:
		2	1. HER HUSBAND WAS HIT FROM BEHIND ON THE FREEWAY
			AND WAS PUSHED INTO THE
		3	VEHICLE IN FRONT OF THEM AND THE AIRBAGS NEVER
			DEPLOYED AND THE SEATS WERE
		4	ROLLING FORWARD AND BACK AND FOLDED
		5	2. THE VEHICLE THAT HIT THEM WAS TRAVELING AT ABOUT
			60MPH.
		6	3. THERE WERE THREE CARS INVOLVED.
		7	4. THERE WERE TWO PASSENGERS IN HER HUSBANDS VEHICLE
			AND BOTH WERE WEARING
		8	SEATBELTS.
		9	5. THE DRIVER HAD TO WEAR A NECKBRACE FOR A WEEK AND
			IS TAKING PAIN MEDS.
		10	THE PASSENGER HAS BRUISE ON HIS HEAD AND HAS A SORE
			NECK AND BACK.
		11	6. THE VEHICLE IS CURRENTLY AT HAMBLINS BODY/PAINT/
			AND FRAME SHOP
		12	(909) 689-8440.
		13	7. THERE WAS A POLICE REPORT FILED. (CASE # 9855-CHP IN
			RANCHO CUCAMONGA)
		14	8. THERE WILL BE MEDICAL BILLS BECAUSE THE PASSENGER
			DOES NOT HAVE MED PAY.
		15	BILLS FOR THE VEHILCE HAVE NOT BEEN ASESSED YET.
		16	9. THERE HAS ALSO BEEN AN INSURANCE REPORT FILED.
			(CLAIM # M 937 14 CHERYL
		17	SMITH MERCURY CASUALTY CO. (909) 637-6208.
		18	10. SHE WOULD LIKE TO HAVE THE VEHILCE INSPECTED TO
			SEE WHY THE SEATS WERE
		19	ROLLING AROUND AND WHY THE AIRBAGS DID NOT DEPLOY.
		20	11. SHE HAS NO PLANS OF BRINGING IT TO A DLRSHP AT THIS
			TIME.
		21	--WRITER ADVISED CUST THAT SHE WOULD BE SENT A
			LETTER REQUESTING DOCUMENTS
		22	ABOUT THE ACCIDENT. WRITER FORWARDING FILE TO
			REGION AND (JWILL) FOR "DOCREQ".

23 **********ATTN REGION**********.

24 PLEASE NOTE THE ABOVE COMMENTS. FILE IS BEING SENT AS PIR NO CLOSE NECESSARY

25 **********

26 DCS MESSAGE SENT: 02/06/98 (FIRST MESSAGE)

27 DCS MESSAGE SENT: 02/09/98 (SECOND MESSAGE)

28 ----------

29 2/10/98 (JWILL) MAILED OUT "DOCREQ" LETTER TO THE CUSTOMER.

30 ********** OPENED FROM INQUIRY STATUS: 02/26/98 **********

31 -----

32 03/03/98 SZ/WRCA: PIR FORWARDED TO LEGAL DEPT.

33 ----------

34 3/23/98 (JWILL) IN LETTER DATED 3/4/98 CUSTOMER STATES:

35 1. WHEN CUSTOMER WAS IN AN AUTOMOBILE ACCIDENT, THE DRIVER'S SEAT

36 DID NOT STAY STATIONERY, AND THE AIRBAGS DID NOT DEPLOY.

37 2. CUSTOMER STRUCK STEERING WHEEL RESULTING IN INJURY.

File: 421220 - Status: X3 - VIN: KMHVF14N0SU166428 Model: Accent (X3) 1995

MARTINEZ, LUCIANO
15181 VAN BUREN BLVD # 26
RIVERSIDE, CA 92540

File	Type	Line	Comment Contents
		38	3. VEHICLE WAS A "TOTAL LOSS"
		39	4. WOULD LIKE TO BE ABLE TO ENDORSE THE HYUNDAI —
NAME, AND IS REQUESTING			
		40	HMA ASSISTANCE.
		41	--WRITER NOTES THAT CUSTOMER INCLUDED REQUESTED
INFORMATION FROM			
		42	"DOCREQ" LETTER. WRITER WILL FORWARD FILE TO THE
LEGAL DEPARTMENT AND			
		43	RETAIN COPIES FOR OUR FILES.
		44	----------
		45	3/30/98 (JWILD) WRITER RECEIVED LGAAR BACK FROM THE
LEGAL DEPARTMENT STATING			
		46	THAT WRCA WAS TO HANDLE THE CUSTOMER'S FILE. WRITER
WILL FORWARD.			
R		1	PIF TO REGION ON 3-2-98
S			SEE ABOVE

421220

Luciano Martinez
3727 Monroe St. #1
Riverside, CA. 92504
RE: File #421220

March 4, 1998

Hyundai Motor America
10550 Talbert Ave.
P.O. Box 20850
Fountain Valley, CA. 92728-0850

MAR 23 1998
Consumer Affairs Dept.

Dear Department 011:

I am writing this letter because on February 4, 1998 I was involved in a automobile accident. In the accident I was allowed to be thrown forward when hit from behind and back when my car struck another. The seats did not stay in position and the air bags did not deploy. I struck the steering wheel and was injured. My passanger was also injured, we both suffered from back and neck pain. I realize In any accident I would be some what hurt. My reason for writing and filing this complaint is that when I purchased my Hyundai I believed I was buying a safe car for my family. It was equipped with air bags and anti lock brakes to add to my safety. I was dissappointed and frieghtened to find that under a real life test the only thing that protected me and my passenger was the seat belts. The air bags and seats failed. To add insult to injury I was informed by my insurance company's body shop that my car was a total loss not from the accident but because two years earlier my car was rear ended before and was repaired by Quaid Imports a Hyundai Dealership 8330 Indiana Ave. in Riverside. The repair was not done right to the rear left frame causing even more damage to be done in the same spot. To try and deal with the matter on Feb. 12 my wife called Quaid Imports to discuss the problem. She spoke to Scott in their service dept. He was extremely rude and uninterested in the problem. He stated that he was an estimator for his dept. so, my wife asked to speak with the supervisor to which he replied that the supervisor would not say anything he hasn't and there was no need to talk to him.

Needless to say our experience with the Hyundai name has been less than favorable. I only want to be treated fairly and with a little respect. I do not want to end this whole ordeal still feeling this way about Hyundai. My wife and I bought a new Hyundai with confidence in your company once before, I only hope we don't have to be sorry for our decision and never buy one again. We would like to be able to endorse your car and company to our friends and family in the future; just as we had done prior to all of this headache.

SINCERELY

50053246

Luciano Martinez
(909)688-8550

MERCURY INSURANCE GROUP
P.O. Box 59974, Riverside, CA. 92517 (909) 637-6200

FEBRUARY 24, 1998

Luciano Martinez
3727 Monroe Street, #1
Riverside, CA 92504

Re: Date of Loss: February 4, 1998
Our Insured: Diane Martinez
Our Claim Number: RM000937-14

Dear Mr. Martinez:

For your records, enclosed is a copy of the Traffic Collision Report in reference to the above captioned loss.

Sincerely,
MERCURY CASUALTY COMPANY

Cheryl Smith Lessnick

CHERYL SMITH-LESSNICK
Senior Claims Representative
Riverside Branch
909/637-6208

CSL/ja
Enclosures

50053247

TE OF CALIFORNIA
AFFIC COLLISION REPORT — PAGE 1 OF 9

TIAL CONDITIONS	NO INJ: 2	H&R FEL: [X]	CITY: ONTARIO	JUDICIAL DISTRICT: WEST VALLEY	NUMBER: 98020035
	NO KILL: 0	H&R MISD: [ ]	COUNTY: SAN BERNARDINO	DIST:	BEAT: 103

LOCATION

COLLISION OCCURRED ON: I-10 W/B (SAN BERNARDINO)	MO 02 DAY 04 YEAR 98	TIME(2400): 1755	NCIC #: 9855	OFFICER I.D.: 014831
MILEPOST INFORMATION: 180 feet W of MP 10 SBD 05.28	DAY OF WEEK: WEDNESDAY	TOW AWAY: [ ] YES [X] NO	PHOTOGRAPHS BY:	
[ ] AT INTERSECTION WITH: [X] OR: 100 feet W of 4TH STREET		STATE HWY REL: [X] YES [ ] NO	[X] NONE	

PARTY 1

DRIVER'S LICENSE NUMBER	STATE	CLASS	SAFETY	VEH YR	MAKE/MODEL/COLOR	LICENSE NUMBER	STATE
					VOLKS JETTA WHITE		

DRIVER [X]
NAME(FIRST,MIDDLE,LAST): 20001(A) V.C.
PEDESTRIAN [ ]
STREET ADDRESS:
MARKED VEHICLE [ ]
CITY/STATE/ZIP:
OWNER'S NAME: [ ] SAME AS DRIVER
OWNER'S ADDRESS: [ ] SAME AS DRIVER

SEX	HAIR	EYES	HEIGHT	WEIGHT	BIRTHDATE	RACE
F	GRY		5-05			

SCHOOL BUS [ ]
DISPO OF VEHICLE ON ORDERS OF: [ ] OFFICER [X] DRIVER [ ] OTHER: DRIVEN AWAY
OTHER [ ]
HOME PHONE: ( ) NONE
BUSINESS PHONE: ( ) NONE
PRIOR MECHANICAL DEFECTS: NONE APPARENT [X] REFER TO NARRATIVE [ ]
INSURANCE CARRIER:
POLICY NUMBER:
CHP USE ONLY VEHICLE TYPE: 01
DESCRIBE VEHICLE DAMAGE: [X] UNK [ ] NONE [ ] MINOR [ ] MOD. [ ] MAJOR [ ] TOTAL
SHADE IN DAMAGED AREA

DIR TRV	ON STREET OR HIGHWAY	SPD LMT	PCF
W	I-10	65	

PARTY 2

DRIVER'S LICENSE NUMBER	STATE	CLASS	SAFETY	VEH YR	MAKE/MODEL/COLOR	LICENSE NUMBER	STATE
A7836735	CA	C	M	95	HYUN 2 DOOR GREEN	3PPY683	CA

DRIVER [ ]
NAME(FIRST,MIDDLE,LAST): LUCIANO MARTINEZ
PEDESTRIAN [ ]
STREET ADDRESS: 15181 VAN BUREN BLVD #263
MARKED VEHICLE [ ]
CITY/STATE/ZIP: RIVERSIDE CA 92504
OWNER'S NAME: [X] SAME AS DRIVER
OWNER'S ADDRESS: [X] SAME AS DRIVER

SEX	HAIR	EYES	HEIGHT	WEIGHT	BIRTHDATE	RACE
M	BLK	BRN	6-00	175	01 06 72	

SCHOOL BUS [ ]
DISPO OF VEHICLE ON ORDERS OF: [ ] OFFICER [X] DRIVER [ ] OTHER: DRIVEN AWAY
OTHER [ ]
HOME PHONE: ( ) NONE
BUSINESS PHONE: ( ) NONE
PRIOR MECHANICAL DEFECTS: NONE APPARENT [X] REFER TO NARRATIVE [ ]
INSURANCE CARRIER: MERCURY
POLICY NUMBER: AP34018732
CHP USE ONLY VEHICLE TYPE: 01
DESCRIBE VEHICLE DAMAGE: [ ] UNK [ ] NONE [ ] MINOR [X] MOD. [ ] MAJOR [ ] TOTAL
SHADE IN DAMAGED AREA

DIR TRV	ON STREET OR HIGHWAY	SPD LMT	PCF
W	I-10	65	

PARTY 3

DRIVER'S LICENSE NUMBER	STATE	CLASS	SAFETY	VEH YR	MAKE/MODEL/COLOR	LICENSE NUMBER	STATE
A2213000	CA	C	G	91	FORD ESCORT BLUE	2UXP068	CA

DRIVER [X]
NAME(FIRST,MIDDLE,LAST): TONY TRUJILLO
C. LESSNICK FEB 23 1998 CLAIMS
PEDESTRIAN [ ]
STREET ADDRESS: 650 E. BONITA AVE #1106
MARKED VEHICLE [ ]
CITY/STATE/ZIP: SAN DIMAS CA 91773
OWNER'S NAME: [X] SAME AS DRIVER
OWNER'S ADDRESS: [X] SAME AS DRIVER
FEB 17 1998

SEX	HAIR	EYES	HEIGHT	WEIGHT	BIRTHDATE	RACE
M	BRN	HZL	5-04	130	08 21 70	

SCHOOL BUS [ ]
DISPO OF VEHICLE ON ORDERS OF: [ ] OFFICER [X] DRIVER [ ] OTHER: DRIVEN AWAY
OTHER [ ]
HOME PHONE: (909) 305-0380
BUSINESS PHONE: ( ) NONE
PRIOR MECHANICAL DEFECTS: NONE APPARENT [X] REFER TO NARRATIVE [ ]
INSURANCE CARRIER: MERCURY
POLICY NUMBER: AP09176669
CHP USE ONLY VEHICLE TYPE: 01
DESCRIBE VEHICLE DAMAGE: [ ] UNK [ ] NONE [ ] MINOR [X] MOD. [ ] MAJOR [ ] TOTAL
SHADE IN DAMAGED AREA

DIR TRV	ON STREET OR HIGHWAY	SPD LMT	PCF
W	I-10	65	22350 V.C.

50053248

REPARER'S NAME: DURBIN, K 014831	DISPATCH NOTIFIED: [ ] Yes [X] No [ ] N/A	REVIEWER'S NAME: 14422	DATE REVIEWED: FEB 13 1998

E OF CALIFORNIA

RAFFIC COLLISION CODING

DATE OF ORIGINAL INCIDENT	TIME(2400)	NCIC NUMBER	OFFICER I.D.	NUMBER
02 - 04 - 98	1755	9855	014831	0BFZ22E3

ATY	OWNERS NAME/ADDRESS	NOTIFIED
DAMAGE	DESCRIPTION OF DAMAGE	

SEATING POSITION

1 2 3
4 5 6
7

1 - DRIVER
2 to 6 - PASSENGERS
7 - STA. WGN. REAR
8 - RR. OCC. TRK. OR VAN
9 - POSITION UNKNOWN
0 - OTHER

SAFETY EQUIPMENT

OCCUPANTS
A - NONE IN VEHICLE
B - UNKNOWN
C - LAP BELT USED
D - LAP BELT NOT USED
E - SHOULDER HARNESS USED
F - SHOULDER HARNESS NOT USED
G - LAP/SHOULDER HARNESS USED
H - LAP/SHOULDER HARNESS NOT USED
J - PASSIVE RESTRAINT USED
K - PASSIVE RESTRAINT NOT USED

L - AIR BAG DEPLOYED
M - AIR BAG NOT DEPLOYED
N - OTHER
P - NOT REQUIRED

M/C BICYCLE - HELMET
DRIVER
V - NO
W - YES

CHILD RESTRAINT
Q - IN VEHICLE USED
R - IN VEHICLE NOT USED
S - IN VEHICLE USE UNKNOWN
T - IN VEHICLE IMPROPER USE
U - NONE IN VEHICLE

PASSENGER
X - NO
Y - YES

EJECTED FROM VEH

0 - NOT EJECTED
1 - FULLY EJECTED
2 - PARTIALLY EJECTED
3 - UNKNOWN

ITEMS MARKED BELOW WHICH ARE FOLLOWED BY AN ASTERISK (*) SHOULD BE EXPLAINED IN THE NARRATIVE

PRIMARY COLLISION FACTOR LIST NUMBER (#) OF PARTY AT FAULT

3	A VC SECTION VIOLATED: CITED 22350 V.C. NO
	B OTHER IMPROPER DRIVING*
	C OTHER THAN DRIVER*
	D UNKNOWN*
	E FELL ASLEEP*

WEATHER (MARK 1 TO 2 ITEMS)

	A CLEAR
X	B CLOUDY
	C RAINING
	D SNOWING
	E FOG / VISIBILITY:
	OTHER*:
	WIND

LIGHTING

	A DAYLIGHT
	B DUSK- DAWN
	C DARK - STREET LIGHTS
X	D DARK - NO STREET LIGHTS
	E DARK - STREET LIGHTS NOT FUNCTION

ROADWAY SURFACE

X	A DRY
	B WET
	C SNOWY - ICY
	D SLIPPERY (MUDDY,OILY,ETC.)

ROADWAY CONDITIONS MARK 1 TO 2 ITEMS

	A HOLES, DEEP RUTS*
	B LOOSE MATERIAL ON RDWY*
	C OBSTRUCTION ON ROADWAY*
X	D CONSTRUCTION - REPAIR ZONE
	E REDUCED ROADWAY WIDTH
	F FLOODED*
	G OTHER*:
	H NO UNUSUAL CONDITIONS

TRAFFIC CONTROL DEVICES

	A CONTROLS FUNCTIONING
	B CONTROLS NOT FUNCTIONING*
	C CONTROLS OBSCURED
X	D NO CONTROLS PRESENT/FACTOR

TYPE OF COLLISION

	A HEAD-ON
	B SIDESWIPE
X	C REAR END
	D BROADSIDE
	E HIT OBJECT
	F OVERTURNED
	G VEHICLE / PEDESTRIAN
	H OTHER*:

MOTOR VEHICLE INVOLVED WITH

	A NON-COLLISION
	B PEDESTRIAN
X	C OTHER MOTOR VEHICLE
	D MOTOR VEH ON OTHER ROADWAY
	E PARKED MOTOR VEHICLE
	F TRAIN
	G BICYCLE
	H ANIMAL:
	I FIXED OBJECT:
	J OTHER OBJECT:

PEDESTRIAN'S ACTIONS

X	A NO PEDESTRIAN INVOLVED
	B CROSSING IN XWALK/INTERSECTION
	C CROSSING IN XWALK NOT AT INTERSECTION
	D CROSSING NOT IN CROSSWALK
	E IN ROAD - INCLUDES SHOULDER
	F NOT IN ROAD
	G APPROACHING/LEAVING SCHOOL BUS

1	2	3	TYPE OF VEHICLE
			A PASSENGER CAR/STN. WGN.
			B PASSENGER CAR W./ TRAILER
			C MOTORCYCLE / SCOOTER
			D PICKUP OR PANEL TRUCK
			E PICKUP/PANEL TRK. W/TLR.
			F TRUCK OR TRUCK TRACTOR
			G TRK./TRK. TRACTOR W /TLR.
			H SCHOOL BUS
			I OTHER BUS
			J EMERGENCY VEHICLE
			K HWY. CONST. EQUIPMENT
			L BICYCLE
			M OTHER VEHICLE
			N PEDESTRIAN
			O MOPED

1	2	3	OTHER ASSOCIATED FACTOR MARK 1 TO 2 ITEMS
			A VC SECTION VIOLATION: CITE
			B VC SECTION VIOLATION: CITE
			C VC SECTION VIOLATION: CITE
			E VIS. OBSCURED:
			F INATTENTION*
			G STOP & GO TRAFFIC
			H ENTERING / LEAVING RAMP
			I PREVIOUS COLLISION
			J UNFAMILIAR WITH ROAD
			K DEFECTIVE VEH. EQUIP.: CITE
			L UNINVOLVED VEHICLE
			M OTHER*:
X	X	X	N NONE APPARENT
			O RUNAWAY VEHICLE

1	2	3	MOVEMENT PRECEDING COLLISION
X	X		A STOPPED
—	—	X	B PROCEEDING STRAIGHT
			C RAN OFF ROAD
			D MAKING RIGHT TURN
			E MAKING LEFT TURN
			F MAKING U TURN
			G BACKING
			H SLOWING / STOPPING
			I PASSING OTHER VEHICLE
			J CHANGING LANES
			K PARKING MANEUVER
			L ENTERING TRAFFIC
			M OTHER UNSAFE TURNING
			N XING INTO OPPOSING LANE
			O PARKED
			P MERGING
			Q TRAVELING WRONG WAY
			R OTHER*:

1	2	3	SOBRIETY - DRUG PHYSICAL (MARK 1 TO 2 ITEMS)
	X	X	A HAD NOT BEEN DRINKING
			B HBD - UNDER INFLUENCE
			C HBD - NOT UNDER INFLUENCE
			D HBD - IMPAIRMENT UNK.*
			E UNDER DRUG INFLUENCE*
			F IMPAIRMENT - PHYSICAL*
X			G IMPAIRMENT NOT KNOWN
			H NOT APPLICABLE
			I SLEEPY / FATIGUED

SPECIAL INFORMATION

			A HAZARDOUS MATERIAL
			B SEATBELT FAILURE

KETCH

REFER TO PAGE 4

C. LESSNICK
FEB 23 1998
CLAIMS

MISCELLANEOUS

50053249

TE OF CALIFORNIA

JURED/WITNESSES/PASSENGERS

ATE OF COLLISION	TIME(2400)	NCIC NUMBER	OFFICER I.D.	NUMBER
02 - 04 - 98	1755	9855	014831	0BFZ22E3

	PASSENGER ONLY	AGE	SEX	EXTENT OF INJURY ('X' ONE)				INJURED WAS ('X' ONE)					PARTY NUMBER	SEAT POS.	SAFETY EQUIP.	EJECTED
				FATAL INJURY	SEVERE INJURY	OTHER VISIBLE INJURY	COMPLAINT OF PAIN	DRIVER	PASS.	PED.	BIKE	OTHER				
		26	M				X	X					2	1	M	0

AME/D.O.B./ADDRESS — TELEPHONE

LUCIANO MARTINEZ 01-06-72
H-15181 VAN BUREN BLVD #263, RIVERSIDE, CA, 92504

NJURED ONLY) TRANSPORTED BY: — TAKEN TO:

REFUSED TO BE TRANSPORTED. — WILL SEEK OWN MEDICAL AID.

ESCRIBE INJURIES:

PAIN TO R/SIDE OF NECK AND LOWER BACK.

[ ] VICTIM OF VIOLENT CRIME NOTIFIED

		22	M				X		X				2	3	M	0

AME/D.O.B./ADDRESS — TELEPHONE

MICHAEL PEZIWA 05-19-75
H-SAME AS P-2, , ,

NJURED ONLY) TRANSPORTED BY: — TAKEN TO:

REFUSED TO BE TRANSPORTED. — WILL SEEK OWN MEDICAL AID.

ESCRIBE INJURIES:

BUMP TO TOP R/SIDE OF HEAD. PAIN TO R/SIDE CHEEK BONE.

[ ] VICTIM OF VIOLENT CRIME NOTIFIED

).O.B./ADDRESS — TELEPHONE

NJURED ONLY) TRANSPORTED BY: — TAKEN TO:

)ESCRIBE INJURIES:

[ ] VICTIM OF VIOLENT CRIME NOTIFIED

NAME/D.O.B./ADDRESS — TELEPHONE

INJURED ONLY) TRANSPORTED BY: — TAKEN TO:

DESCRIBE INJURIES:

[ ] VICTIM OF VIOLENT CRIME NOTIFIED

NAME/D.O.B./ADDRESS — TELEPHONE

C. LESSNICK
FEB 23 1998
CLAIMS

(INJURED ONLY) TRANSPORTED BY: — TAKEN TO:

50053250

)IBE INJURIES:

[ ] VICTIM OF VIOLENT CRIME NOTIFIED

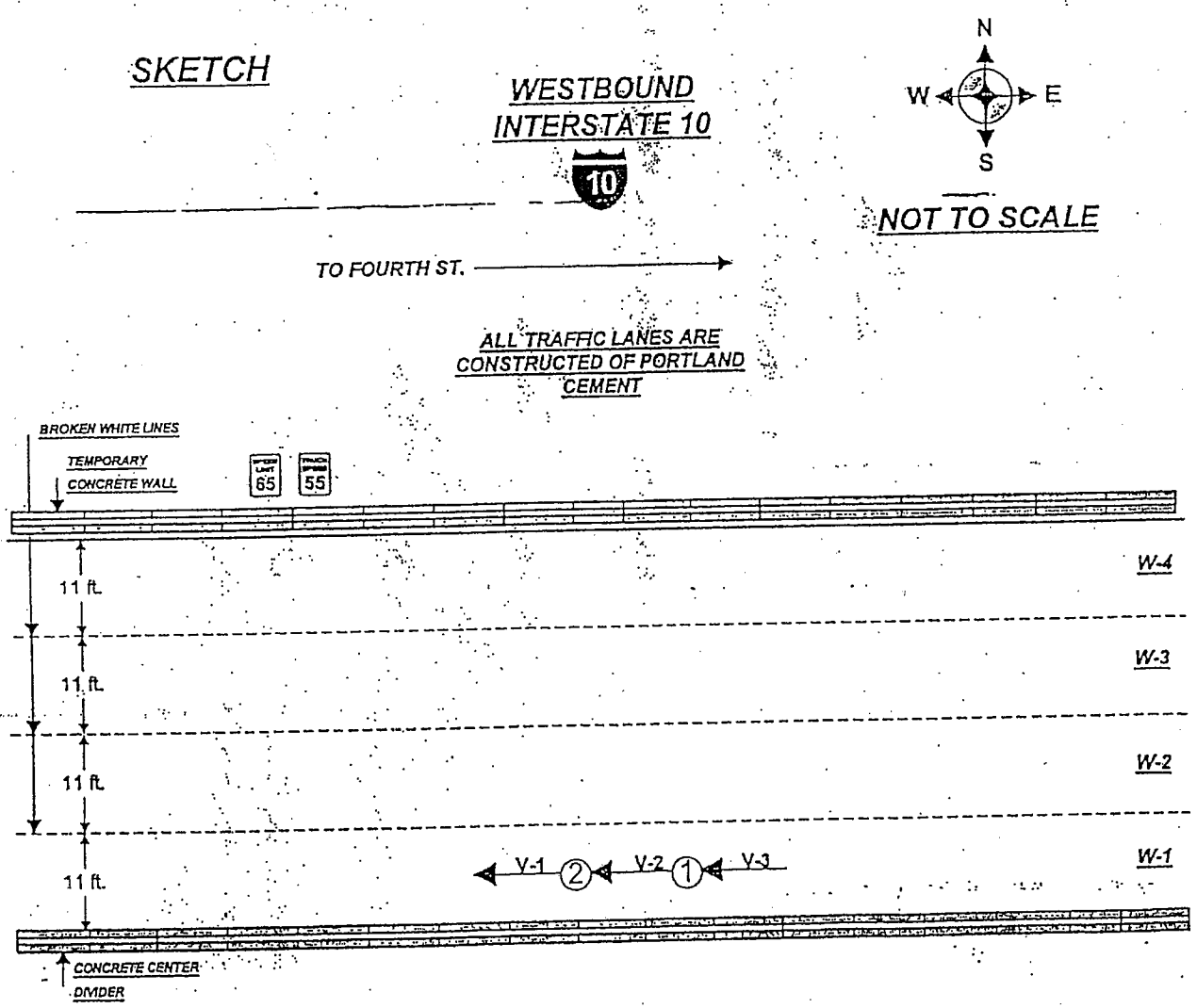
PREPARER'S NAME	I.D NUMBER	MO. DAY YR.	REVIEWER'S NAME	MO. DAY YR.
DURBIN, K	014831	02-04-98		

STATE OF CALIFORNIA

NARRATIVE/SUPPLEMENTAL

DATE OF INCIDENT	TIME	NCIC NUMBER	OFFICER I.D.	NUMBER
02/04/98	1755	9855	014831	98020

SKETCH



C. LESSNICK
FEB 23 1998
CLAIMS

50053251

PREPARER'S NAME	I.D. NUMBER	DATE	REVIEWER'S NAME	DATE
M OLSON	014154	02/04/98		

STATE OF CALIFORNIA

NARRATIVE/SUPPLEMENTAL PAGE 5

E OF INCIDENT	TIME	NCIC NUMBER	OFFICER I.D.	NUMBER
2/04/98	1755	9855	014831	98020

FACTUAL DIAGRAM

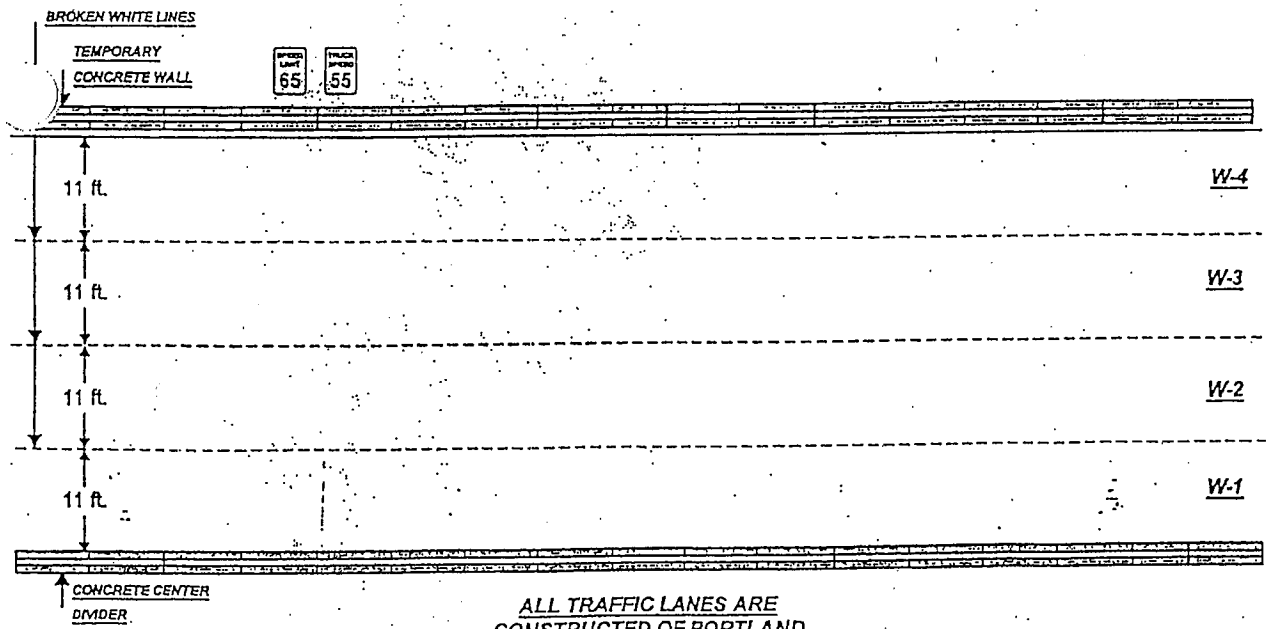
WESTBOUND
INTERSTATE 10

10

N
W E
S

NOT TO SCALE

TO FOURTH ST. →



ALL TRAFFIC LANES ARE CONSTRUCTED OF PORTLAND CEMENT

NOTE: VEHICLES WERE MOVED TO EXPEDITE THE FLOW OF TRAFFIC. VEHICLES ARE NOT SHOWN.

C. LESSNICK
FEB 23 1998
CLAIMS

50053252

PREPARER'S NAME	I.D. NUMBER	DATE	REVIEWER'S NAME	DATE
M OLSON	014154	02/04/98		

DATE OF INCIDENT	TIME	NCIC NUMBER	OFFICER I.D.	NUMBER
02/04/97	1755	9855	014831	

FACTS:

NOTIFICATION:
I was dispatched to a call of a minor injury traffic collision at 2005 hours. I responded from W/B I-10 and Haven Ave and arrived at approx 2030 hours. Parties were directed by Officer M. Olson (#14154) to exit on Euclid Ave N/of the I-10 for a report. All times, speeds and measurements in this investigation are approximate. Measurements were taken by estimation, except where otherwise indicated.

SCENE:
At the scene of this collision, I-10 is an eastbound/westbound freeway consisting of four lanes each direction. Each lane is delineated by broken white painted lines. The roadway is relatively straight and level. Due to the construction, the W/B lanes are separated from the E/B lanes by a temporary concrete center divider wall and the N/edge of W/B I-10 is bordered by a concrete K-rail. The were no roadway obstructions or visual obscurements. The rdwy is constructed of concrete. Refer to diagram for further details.

PARTIES AND VEHICLES:

Party # 1 (P-1 (20001(A) V.C. Hit and Run Suspect):
P-1 fled the scene following the collision.

Volkswagen Jetta (V-1):
V-1 was driven away from the scene by P-1 following the collision.

Party #2 (P-2 Martinez):
P-2 was contacted, seated behind the steering wheel of V-2 and was identified by a California driver's license. P-2 was placed as the driver of V-2 by the following items:

- personal statements.
- injuries.
- being in possession of the keys.
- being the registered owner.
- P-3's statements.

Hyundai Coup (V-2):
V-2 was located on Euclid Ave N/of the I-10. V-2 was moved by P-2 to expedite the flow of traffic. V-2 sustained moderate damage to the rear bumper and trunk. V-2 also had damage to the front bumper, grill and hood. There were no prior mechanical defects or damage noted or claimed.

C. LESSNICK
FEB 23 1998
CLAIMS

50053253

PREPARER'S NAME	I.D. NUMBER	DATE	REVIEWER'S NAME
K DURBIN	014831	02/04/97	

DATE OF INCIDENT	TIME	NCIC NUMBER	OFFICER I.D.	NUMBER
02/04/97	1755	9855	014831	

Party #3 (P-3 Trujillo):
P-3 was contacted, seated behind the steering wheel of V-3. P-3 was identified by a description through dispatch using P-3's driver's license number A2213000 and DOB. The description came back from dispatch matching his physical appearance. P-3 was placed as the driver of V-3 by the following items:

- personal statements.
- being in possession of the keys.
- location.
- being the registered owner.
- ~~P-2's statements.~~

Ford Escort (V-3):
V-3 was located on Euclid Ave N/of I-10. V-3 was moved by P-3 to expedite the flow of traffic. V-3 sustained moderate damage to the front bumper, grill, headlights, hood and radiator. There were no prior mechanical defects or damage noted or claimed.

PHYSICAL EVIDENCE:
1. Vehicle damage.

STATEMENTS:

Party # 1 (P-1 (20001(A) Hit and Run Suspect):
P-1 fled the scene following the collision.

Party #2 (P-2 (Matinez):
P-2 related in essence that he was traveling W/B I-10 in the #1 lane stopped, because traffic in front of him was stopped. He stated he was behind a white Volkswagen Jetta (V-1) approx one and a half car lengths. P-2 said he was at a stop for about 3 seconds when he was suddenly struck from behind and then pushed forward into V-1. He said after the collision he and his passenger got out of the car to see if everyone was all right. P-2 stated that P-1 told him she didn't want to get involved and got back into her car and left. He said he didn't get a chance to get the license plate number.

Party #3 (P-3 (Trujillo):
P-3 related in essence he was W/B I-10 in the #1 lane at approx 40 mph. He stated that suddenly he came upon traffic stopped in the #1 lane. He said it happened so fast and unexpectedly that he didn't have time to apply his brakes and he collided into the rear of a green car (V-2).

C. LESSNICK
FEB 23 1998
CLAIMS

50053254

PREPARER'S NAME	I.D. NUMBER	DATE	REVIEWER'S NAME
K DURBIN	014831	02/04/97	

HIT AND RUN FOLLOW-UP INFORMATION:

V-1 was described as a Volkswagen Jetta, white in color. According to the information given by P-2, V-1 had no damage. P-2 was unable to obtain a license plate number.

P-1 (20001(A) V.C. Hit and Run Suspect) was described as a white female in her mid 60s', approx 5-05 in height, gray hair and glasses, wearing a flower pattern blue dress. P-2 and his passenger said P-1 looked at her car and saw no apparent damage and said she did not want to be involved. P-2 said P-1 then got back into her car and left. P-2 was unable to provide any further information on P-1 or V-1. P-2 and his passenger ~~said they could positively identify~~ ~~P-1 as~~ the driver of V-1 if seen ~~again~~.

OPINIONS AND CONCLUSIONS

SUMMARY:

P-1 (20001(A) V.C. Unknown Hit and Run Suspect) was W/B I-10 in the #1 lane, stopped.
P-2 (Matinez) was W/B I-10 in the #1 lane, stopped behind V-1 approx. one and a half car lengths.
P-3 (Trijillo) was W/B I-10 in the #1 lane, approaching the rear of V-2 at approx 40 mph. P-3 unexpectedly came upon stopped traffic and was unable to apply his brakes to stop or slow down and struck the rear of V-2. The impact pushed V-2 forward into the rear of V-1. Following the collision, P-1 fled the scene in V-1. P-2 and P-3 exited Euclid Ave, N/of the I-10 for a report.

Opinions and conclusions were based upon physical evidence and statements.

AREA OF IMPACT (AOI):

AOI #1 occurred approx 100 ft. W/of the W/edge of Fourth St. and approx 38 ft. S/of the N/rdwy edge of W/B I-10.
AOI #2 occurred approx 125 ft. W/of the W/edge of Fourth St. and approx 38 ft. S/of the N/rdwy edge of W/B I-10.

CAUSE:

P-3 (Trijillo) caused this collision by driving V-3 in violation of section 22350 V.C.- Unsafe speed for conditions.
P-1 (20001(A) V.C. Hit and Run Suspect) is in violation of section 20001(A) V.C.- Leaving the scene of a collision resulting in injury without exchanging information.

C. LESSNICK
FEB 23 1998
CLAIMS

50053255

DATE OF INCIDENT	TIME	NCIC NUMBER	OFFICER I.D.	NUMBER
02/04/97	1755	9855	014831	

RECOMMENDATIONS:

No recommendations can be made due to no disinterested, independent witnesses and the lack of information for follow-up on P-1 (20001(A) V.C. Hit and Run Suspect). Should additional information become available which would place P-1 as the driver of V-1, it will be added to this report as a supplemental and prosecution will be recommended.

50053256

C. LESSNICK
FEB 23 1998
CLAIMS

PREPARER'S NAME	I.D. NUMBER	DATE	REVIEWER'S NAME
K DURBIN	014831	02/04/97	

Scott, estimator

DAMAGE REPORT
10/19/96 at 12:22
A-099924

MARTINEZ
D.R. 33393-1092713
Est: M. CHRISTIAN

QUAID IMPORTS

Coast Body
8330 INDIANA AVE.
RIVERSIDE, CA 92504- S.00
(909) 688-9420-232

Owner: LUCKINO MARTINEZ
Address: 15181 VAN BUREN BLVD
RIVERSIDE CA

Day Phone: ( ) - -
Other Ph: ( ) - -
Deductible: $ N/A

Insurance Co.: Phone:
Claim No.: Adj.:

95 HYUN ACCENT 4D SED BLUE/GREEN 4-1.5L-FI
Vin: KMHVF14N0SU166428 License: 3PPY683 CA Prod Date: 0/ 0 Odometer: 13

Automatic transmission	Power steering	Tinted glass
Air conditioning	Am radio	Fm radio
Stereo	Cassette	Anti-lock brakes (4)
Clear coat paint	California emissions	

NO.	OP.	DESCRIPTION OF DAMAGE	QTY	PART COST	LABOR	PAINT	MIS
1		REAR BUMPER					
2	Repl	Bumper cover 4 door	1	123.70	1.2	2.6	
3		Add for Clear Coat	1			1.0	
4	Repl	Bumper cover retainer	1	2.32			
5	Repl	Bumper cover grommet	1	0.17			
6	Repl	Bumper cover side reinf	1	2.39			
7	Repl	Bumper cover nut	1	0.34			
8	Repl	RT Mount bracket 4 door	1	23.79			
9	Repl	LT Mount bracket 4 door	1	23.79			
10	Repl	Mount bracket retainer	1	1.47			
11	Repl	Energy absorber 4 door	1	143.93			
12	Repl	Reinf beam 4 door	1	301.54			
13		REAR LAMPS					
14	Repl	LT Rear lamp assy	1	77.47	0.4		
15		TRUNK LID					
16*	Repr	Trunk lid	1		3.0	3.1	
17		Add for Clear Coat	1			1.2	
18	Repl	LT Hinge	1	40.07	0.3	0.3	
19		REAR BODY & FLOOR					
20*	Repr	Panel below lid	1		5.0	1.7	
21		Overlap Major Adjacent Panel	1			-0.4	
22		Add for Clear Coat	1			0.3	
23*	Repr	Rear floor pan	1		5.0	1.5	
24*	Repl	REAR FLOOR SOUND DEADNER	1	5.00	0.5		
25		QUARTER PANEL					

50053257

DAMAGE REPORT
10/19/96 at 12:22
LA-099924

MARTINEZ
D.R. 33393-109271
Est: M. CHRISTIAN

QUAID IMPORTS

8330 INDIANA AVE
RIVERSIDE, CA 92504-
(909) 688-9420-232

NO.	OP.	DESCRIPTION OF DAMAGE	QTY	PART COST	LABOR	PAINT	MI
26*	Repr	LT Quarter panel	1		5.0	2.0	
27		Overlap Major Adjacent Panel	1			-0.4	
28*		Add for Clear Coat	1			0.3	
29*		FRAME SET UP	1		3.0		F
30*		PULL & SQUARE	1		5.0		F
31		FRONT SUSPENSION					
32	Repl	Whl algnmnt algn fr whls	1		1.9		M
33*		BLEND ADJACENT PANELS	1		2.0		
34*		COVER CAR	1		0.5		T 5
35*		COLOR MATCH	1			1.0	
36*		COLOR SAND & BUFF	1		2.5		
37*		FLEX ADDITIVE	1				T 12
38*		HAZARDOUS WASTE DISPOSAL	1				T 5
39*		PINSTRIPES-TAPE	1				X 25
40*		UNDERCOAT	1	5.00	0.5		
		Subtotals ===>		750.98	35.8	14.2	47

50053258

DAMAGE REPORT
10/19/96 at 12:22
A-099924

MARTINEZ
D.R. 33393-109271
Est: M. CHRISTIAN

QUAID IMPORTS

8330 INDIANA AVE
RIVERSIDE, CA 92504-
(909) 688-9420-232

Parts				75
Body Labor	25.9	units @	$28.00	72
Paint Labor	14.2	units @	$28.00	39
Paint/Materials	14.2	units @	$18.00	25
Frame Labor	8.0	units @	$45.00	36
Mech. Labor	1.9	units @	$51.00	9
Sublet/Misc				4
SUBTOTAL				$ 263.
Tax on $ 1029.08 at 7.7500%				7
GRAND TOTAL				$ 271.
INSURANCE PAYS				$ 271

Estimate based on MOTOR CRASH ESTIMATING GUIDE. Non-asterisk(*) items are derived from the Guide IRR1040. Database Date 6/96
Double asterisk(**) items indicate part supplied by a supplier other than the original equipment manufacturer.
CAPA items have been certified for fit and finish by the Certified Auto Parts Association.
EZEst - A product of CCC Information Services Inc.

50053259

Mercury Insurance Group
555 W. Imperial Hwy. • Brea, California 92821 • 714/671-6600

February 20, 1998

Diane R. Martinez
3727 Monroe St. #1
Riverside, CA. 92504

RE: Claim #: RM000937-14
Date of Loss: February 04, 1998

Dear Ms. Martinez:

As per your request, enclosed is a copy of the estimate from Humblin's Body Paint & Frame.

If you have any questions, feel free to contact me between the hours of 8:00 AM and 4:45 PM, Monday through Friday at (714) 255-5293.

Sincerely,
MERCURY CASUALTY COMPANY

Debby Graehen
Total Loss Specialist

cc: Cheryl Smith, Claims Branch 13

DB/dg

50053260

Date: 02/12/98 08:03 AM
Estimate ID: RM000937-14
Committed
Profile ID: MERCURY

HAMBLINS BODY PAINT & FRAME
7590 Cypress Ave. RIVERSIDE, CA 92503
(909) 689-8440
Fax: (909) 689-7363

Damage Assessed By: KEN PEDERSEN

Appraised For: CHERYL SMITH LESSNICK
(909) 637-6208

Condition Code: Good
Date of Loss: 2/04/98
Deductible: 500.00
Policy No: AP34018732

Type of Loss: Collision

Claim Number: RM000937-14

TOTAL LOSS

Insured: DIANE R MARTINEZ
Address: 3727 MONROE STREET #1 RIVERSIDE, CA 92504
Telephone: Work Phone: (909) 390-3944 Home Phone: (909) 688-8550

Mitchell Service: 910723

Description: 1995 Hyundai Accent
Body Style: 4D Sed
VIN: KMHVF14N0SU166428
Mileage: 35,833
Color: TEAL GREEN

Vehicle Production Date: 3/95
Drive Train: 1.5L Inj 4 Cyl 5M
License: 3PPY683 CA

Line Item	Entry Number	Labor Type	Operation	Line Item Description	Part Type/ Part Number	Dollar Amount	Labor Units	CEG Unit
1	000005	BDY	REMOVE/REPLACE	INFORM LABEL EMISSION CONTROL	32450-22330	6.18		T
2	AUTO	BDY	OVERHAUL	FRT COVER ASSY			1.8	1.8
3	000015	BDY	REMOVE/REPLACE	FRT BUMPER COVER	Recored	120.00 *	INC #	1.8T
4	AUTO	REF	REFINISH	FRT BUMPER COVER		C	2.3	2.3
5	000022	BDY	REMOVE/REPLACE	R FRT BUMPER BRACKET	86538-22000	17.03	INC	T
6	000023	BDY	REMOVE/REPLACE	L FRT BUMPER BRACKET	86537-22000	17.03	INC	T
7	000024	BDY	REMOVE/REPLACE	FRT UPR CTR BUMPER BRACKET	86532-22000	34.11	INC	T
8	000025	BDY	REMOVE/REPLACE	FRT BUMPER COVER RETAINER	86590-28000	9.20 *	INC	T
9				8 CLIPS @1.15EA				
10	000029	BDY	REMOVE/REPLACE	R FRT BUMPER REINFORCEMENT BRKT	86536-22000	1.92	INC	T
11	000030	BDY	REMOVE/REPLACE	L FRT BUMPER REINFORCEMENT BRKT	86535-22000	1.92	INC	T
12	000032	BDY	CHECK/ADJUST	HEADLAMPS			0.4	0.4
13	000037	BDY	REMOVE/REPLACE	R H/LAMP ASSEMBLY	92102-22050	160.05	INC #	0.4T
14	000038	BDY	REMOVE/REPLACE	L H/LAMP ASSEMBLY	92101-22050	160.05	INC #	0.4T
15	000057	BDY	REMOVE/REPLACE	R PARK/SIGNAL/MKR LAMP ASSEMBLY	92306-22050	30.39	INC #	0.2T
16	000058	BDY	REMOVE/REPLACE	L PARK/SIGNAL/MKR LAMP ASSEMBLY	92305-22050	30.39	INC #	0.2T
17	000067	BDY	REPAIR	COOLING RADIATOR	Sublet	75.00 *	0.8*	0.8
18	002329	BDY	REMOVE/REPLACE	HOOD PANEL	66400-22021	217.47	1.0	1.0T
19	AUTO	REF	REFINISH	HOOD OUTSIDE		C	2.7	2.7
20	AUTO	REF	REFINISH	HOOD UNDERSIDE		C	1.3	1.3
21	000110	BDY	REMOVE/REPLACE	HOOD ADHESIVE EMBLEM	86341-22200	6.37	0.1	0.2
22	000114	BDY	REMOVE/REPLACE	R FRT OTR HOOD SEAL	86447-22000	9.94	INC	0.2
23	000115	BDY	REMOVE/REPLACE	L FRT OTR HOOD SEAL	86437-22000	9.94	INC	0.2
24	000116	BDY	REMOVE/REPLACE	FRT CTR HOOD SEAL	86435-22000	8.89	INC	0.2
25	000123	BDY	REMOVE/REPLACE	HOOD PRIMARY LATCH	81130-22002	26.46	INC	0.3
26	000190	REF	BLEND	R FENDER OUTSIDE		C	0.8	2.0
27	000191	REF	BLEND	L FENDER OUTSIDE		C	0.8	2.0
28	000194	BDY	REMOVE/INSTALL	R FENDER ASSY			0.8 #	0.8

TOTAL LOSS

TOTAL LOSS

ESTIMATE RECALL NUMBER: 2/12/98 08:02:44 RM000937-14

Mitchell Data Version: FEB_98_A

50053261

Date. 02/12/98 08:03 AM
Estimate ID: RM000937-14
Committed
Profile ID: MERCURY

29	000195	BDY	REMOVE/INSTALL	L FENDER ASSY				0.8	#	0.8
	002053	BDY	REMOVE/REPLACE	FRONT BODY RADIATOR SUPPORT	-S	64100-22300	173.54	7.1	#	7.5T
	AUTO	REF	REFINISH	RADIATOR SUPPORT COMPLETE				1.5		1.5
32	000569	BDY	REMOVE/INSTALL	CTR EXHAUST PIPE		Existing		0.5	*	0.5
33	000570	BDY	REMOVE/INSTALL	EXHAUST MUFFLER W/PIPE		Existing		0.5	*	0.5
34	000827	BDY	REMOVE/REPLACE	L FRT INR SEAT DRIVER SIDE TRACK		88525-22100	63.23	0.8	#	0.8T
35	000830	BDY	REMOVE/REPLACE	L FRT OTR SEAT TRACK COVER		88283-22010	12.74	0.2		0.2T
36	001251	BDY	REMOVE/REPLACE	R QUARTER OUTER PANEL		71504-223A0	355.72	16.0	#	16.0T
37	AUTO	REF	REFINISH	R QUARTER PANEL OUTSIDE				C 2.0		2.4
38	AUTO	REF	REFINISH	R LOCK PILLAR				C 0.5		0.5
39	AUTO	REF	REFINISH	R ADD FOR INSIDE				0.5		0.5
40	001252	BDY	REPAIR	L QUARTER OUTER PANEL		Existing		5.0	* #	16.5
41	AUTO	REF	REFINISH	L QUARTER PANEL OUTSIDE				C 2.0		2.4
42	001309	BDY	REMOVE/REPLACE	LUGGAGE LID PANEL		69200-22010	372.23	1.2		1.2T
43	AUTO	REF	REFINISH	LUGGAGE LID OUTSIDE				C 1.8		2.2
44	AUTO	REF	REFINISH	LUGGAGE LID UNDERSIDE				C 1.1		1.1
45	001315	BDY	REMOVE/REPLACE	L UPR LUGGAGE LID ADHESIVE TAPE PLATE		ORDER FROM DEALER	9.06	0.2		0.2T
46	001343	BDY	REMOVE/REPLACE	LUGGAGE LID LATCH ASSY		81230-22000	18.83	0.3		0.3T
47	001346	BDY	REMOVE/REPLACE	LUGGAGE LID LATCH STRIKER		81290-29000	13.54	INC		0.2T
48	001350	BDY	REMOVE/INSTALL	LUGGAGE LID WEATHERSTRIP		Existing		0.4	*	0.4
49	001482	BDY	REMOVE/REPLACE	REAR BODY PANEL		69100-22300	257.95	4.5	#	6.5T
50	AUTO	REF	REFINISH	REAR BODY PANEL				C 1.4		1.8
51	AUTO	REF	REFINISH	ADD FOR EDGE & INSIDE				0.8		0.8
52	001483	BDY	REMOVE/REPLACE	REAR BODY FLOOR PAN		65511-22300	257.25	16.5	#	16.5T
53		REF	REFINISH/REPAIR	REAR BODY FLOOR PAN				0.5	*	
54	001484	BDY	REMOVE/REPLACE	REAR BODY JACK BRACKET		65514-22000	6.58	0.6		0.6T
55	900500	FRM	REPAIR	UNIBODY FRONT		Existing		3.0	*	
56	001485	BDY	REMOVE/REPLACE	REAR BODY SPARE MOUNT BRACKET		65515-22000	2.77	0.4		0.4T
57	001486	BDY	REMOVE/REPLACE	R REAR BODY RAIL		65720-22300	258.12	4.5	#	7.0T
58	001487	BDY	REMOVE/REPLACE	L REAR BODY RAIL		65710-22300	258.12	4.5	#	7.0T
59	001490	BDY	REMOVE/REPLACE	REAR BODY SCUFF PLATE		85770-22000-LG	17.78	INC		0.2T
60	001514	BDY	REMOVE/REPLACE	R COMBINATION LAMP ASSEMBLY		92402-22050	86.44	INC		0.4T
61	001515	BDY	REMOVE/REPLACE	L COMBINATION LAMP ASSEMBLY		92401-22050	86.44	INC		0.4T
62	AUTO	BDY	OVERHAUL	REAR COVER ASSY				0.4		1.2
63	001548	BDY	REMOVE/REPLACE	REAR BUMPER COVER		Recored	120.00	INC	*	1.2T
64	AUTO	REF	REFINISH	REAR BUMPER COVER				C 2.2		2.2
65	001549	BDY	REMOVE/REPLACE	REAR BUMPER GROMMET		86140-21000	5.24	INC	*	T
66				4 GROMENTS @ 1.31 EA						
67	001551	BDY	REMOVE/REPLACE	R REAR BUMPER BRACE		86634-22000	18.62	INC		T
68	001552	BDY	REMOVE/REPLACE	L REAR BUMPER BRACE		86633-22000	18.62	INC		T
69	001553	BDY	REMOVE/REPLACE	R REAR BUMPER RETAINER		86590-28000	3.45	INC	*	T
70	001554	BDY	REMOVE/REPLACE	L REAR BUMPER RETAINER		86590-28000	3.45	INC	*	T
71				3 @ 1.15 EACH SIDE						
72	900500	REF	ADD'L LABOR OP	FLEX ADDITIVE 2 PNLS		Sublet	16.00	0.0	*	
73	900500	REF	ADD'L LABOR OP	CAULK/SEAM SEALER		Sublet	15.00	0.0	*	
74	900500	FRM	ADD'L LABOR OP	FRAME SETUP AND MEASURE		Sublet	50.00	0.0	*	
75	900500	FRM	REPAIR	UNIBODY REAR		Existing		4.0	*	
76	001555	BDY	REMOVE/REPLACE	R REAR BUMPER REINFORCEMENT		86696-22000	1.86	INC		T
77	001556	BDY	REMOVE/REPLACE	L REAR BUMPER REINFORCEMENT		86696-22000	1.86	INC		T
78	001557	BDY	REMOVE/REPLACE	REAR BUMPER HONEYCOMB REINF		86620-22050	143.93	INC		1.2T
79	001558	BDY	REMOVE/REPLACE	REAR BUMPER RAIL		86630-22050	236.09	INC		1.2T
80	936001		ADD'L COST	TOWING			86.00	*		
81	AUTO	REF	ADD'L OPR	CLEAR COAT				2.5	*	
82	933003	BDY	ADD'L OPR	TINT COLOR				0.5	*	
83	933004	BDY	ADD'L OPR	UNDERCOATING			10.00	0.0	*	
84	933006	REF	ADD'L OPR	CHIP RESISTANT MATERIAL APPLICATION			10.00	0.0	*	
85	933017	BDY	ADD'L OPR	COLOR SAND & BUFF				2.0	*	
86	933018	BDY	ADD'L OPR	MASK FOR OVERSPRAY			10.00	0.0	*	

TOTAL LOSS

TOTAL LOSS

ESTIMATE RECALL NUMBER: 2/12/98 08:02:44 RM000937-14

Mitchell Data Version: FEB_98_A

50053262

Date: 02/12/98 08:03 AM
Estimate ID: RM000937-14
Committed
Profile ID: MERCURY

87 AUTO ADD'L COST PAINT/MATERIALS 300.00

* - Judgement Item
\# - Labor Note Applies
C - Included in Clear Coat Calc

I. Labor Subtotals	Units	Rate	Add'l Labor Amount	Sublet Amount	Totals
Body	71.8	25.00	20.00	75.00	1,890.00
Refinish	24.7	25.00	10.00	31.00	658.50
Frame	7.0	35.00	0.00	50.00	295.00
Non-Taxable Labor					2,843.50
Labor Summary	103.5				2,843.50

III. Additional Costs			Amount
Taxable Costs			300.00
Sales Tax	@	7.750%	23.25
Non-Taxable Costs			86.00
Total Additional Costs			409.25

II. Part Replacement Summary			Amount
Taxable Parts			3,670.8
Parts Adjustments			171.5
Sales Tax	@	7.750%	271.1
Total Replacement Parts Amount			3,770.4

IV. Adjustments	Amount
Insurance Deductible	500.0
Customer Responsibility	500.0

TOTAL LOSS

TOTAL LOSS

I.	Total Labor:	2,843.5
II.	Total Replacement Parts:	3,770.4
III.	Total Additional Costs:	409.2
	Gross Total:	7,023.1
IV.	Total Adjustments:	500.0
	Net Total:	6,523.1

Point(s) of Impact
6 Rear Center (P), 5 Right Rear Corner (S), 7 Left Rear Corner (S), 12 Front Center (S)

Insurance Co: MERCURY INSURANCE GROUP
Address: PO BOX 1150
BREA, CA 92622
Telephone: (714) 671-6600

TOTAL LOSS

ESTIMATE RECALL NUMBER: 2/12/98 08:02:44 RM000937-14
Mitchell Data Version: FEB_98_A

50053263

ER'S NAME

DATE CONTRACT: 1 24 96

Stock No. 80433

BUYER'S RESIDENCE OR PLACE OF BUSINESS — ZIP CODE — AGREEMENT No.

Source

Salesman

BUYER'S NAME AND ADDRESS

Date 1-24-96

Bus.Phone 390-3944

Res.Phone 780-6229

act the words "we," "us" and "our" refer to the creditor (seller) named below or, upon any assignment, its assignee. The words "you" and "your" refer to the buyer and buyer named herein. We sell you the motor vehicle described below on credit. The credit price is shown below as the "Total Sale Price." The "Cash Price" is also shown below. By signing this contract you choose to buy the "vehicle" on credit and agree to pay the Total Sale Price, according to the schedules, terms and agreements shown on the front and back of this contract. If this contract is signed by a buyer and co-buyer, each is individually and together responsible for all agreements in the contract.

OTHER SIDE FOR ADDITIONAL TERMS AND AGREEMENTS: subject to credit approval & assignment of this contract by a lender

/USED	YEAR	MAKE	CYL.	DIESEL	GAS	OTHER	BODY STYLE	MODEL	ODOMETER READING	VEHICLE IDENTIFICATION NUMBER
W	95	HYUNDAI	4		X		4DR	ACCENT	11	KMHVF14N0SU166428

COLOR	TRIM	TIRES	TRANS	KEY NO.	LIC. NO.	R.O.S. NO.
RD LG				R0569		

DISCLOSURES PURSUANT TO THE TRUTH-IN-LENDING ACT

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid after you have made all payments as scheduled.	The total cost of your purchase on credit, including your down payment of $ 1400.00
9.44 %	$ 2,441.39	$ 10397.41	$ 13788.80	$ 14538.80

YOUR PAYMENT SCHEDULE WILL BE:

Number of Payments:	Amount of Payments:	When Payments Are Due:
ne Payment of	650.00	2-21-96
e Payment of		
59 Payments	218.53	Monthly, beginning 3-09-96
e Final Payment	218.98	2-09-01

SECURITY: You are giving a security interest in the goods or property being purchased.
LATE CHARGES: If any payment is more than 10 days late you may be charged 5% of the late amount.
PREPAYMENT: If you pay early, you may be entitled to a refund of part of the finance charge.
See your contract documents for any additional information about nonpayment, default, any required prepayment in full before the scheduled date and prepayment refunds.

NOTICES: The names and addresses of all persons to whom the notices required or permitted by law to be sent are set forth at the top of this form.
If you are buying a used vehicle with this contract, as indicated in the description of the vehicle above, federal regulation may require a special buyers guide to be posted on the window.
INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

STATEMENT OF INSURANCE

NOTICE: No person is required as a condition of financing the purchase of a motor vehicle to purchase, or negotiate, any insurance through a particular insurance company, agent or broker.

You have requested Seller to include in the balance due under this agreement the following insurance. Insurance is to expire WITH ☐ BEFORE ☐ AFTER ☒ the due date of the last installment. Buyer requests seller to procure insurance upon the described property against fire, theft, and collision for the term of this agreement. Any insurance will not be in force until accepted by the insurance carrier.

		Premium
N/a DED., COMP., FIRE & THEFT	Mos.	$ N/a
N/a DEDUCTIBLE COLLISION	Mos.	$ N/a
LY INJURY $ N/a LIMITS	Mos.	$ N/a
ERTY DAMAGE $ N/a LIMITS	Mos.	$ N/a
CAL N/a	Mos.	$ N/a
N/a	Mos.	$ N/a

TOTAL VEHICLE INSURANCE PREMIUMS $ N/a (a)

The foregoing declarations are hereby acknowledged.

24 96 X QUAD HYUNDAI X

SELLER BUYER

CREDIT INSURANCE AUTHORIZATION AND APPLICATION

I voluntarily request the credit insurance checked below, if any, and understand that credit insurance is not required. You acknowledge disclosure of the cost of such insurance and authorize it to be included in the balance payable under the security agreement. Any unearned or refunded credit insurance premiums shall be applied to sums due under this contract. Only the persons whose names are signed below are insured.

DIT LIFE	Mos. Premium	$ N/a
T LIFE	Mos. Premium	$ N/a
DIT DISABILITY	Mos. Premium	$ N/a

TOTAL CREDIT INSURANCE PREMIUMS $ N/a (b)

☐ Credit Life Insurance ☒ You do not want Credit Life Insurance
☐ Joint Credit Disability Insurance (Primary Buyer Only)
☐ You do not want Credit Disability Insurance
☐ You want Joint Credit Life Insurance

You are applying for the credit insurance marked above. Your signature below means that you understand that (1) You are not eligible for insurance if you have reached your 65th birthday. (2) You are eligible for disability insurance only if you are working for wages or profit 30 hours a week or more on the Effective Date. (3) Only the Primary Buyer is eligible for disability insurance.

DISABILITY INSURANCE MAY NOT COVER CONDITIONS FOR WHICH YOU HAVE SEEN A DOCTOR OR CHIROPRACTOR IN THE LAST 6 MONTHS

ITEMIZATION OF AMOUNT FINANCED

1.
- A. Cash Price Motor Vehicle and Accessories $ 10680.00 (A)
  - 1. Cash Price Vehicle $ 10680.00
  - 2. Cash Price Accessories $ Incl.
- B. Document Preparation Charge $ 35.00 (B)(not a governmental fee)
- C. Smog Fee Paid to Seller $ N/a (C)
- D. Smog Exemption Donation Fee $ N/a (D)(paid to State)
- E. Sales Tax (on A+B+C) $ 830.41 (E)
- F. Luxury Tax $ N/a (F)
- G. Service Contract (optional) $ N/a (G)
- H. Other $ N/a (H)

To whom paid

TOTAL CASH PRICE (A to H) $ 11545.41 (1)

2. AMOUNTS PAID TO PUBLIC OFFICIALS
- A. License $ 252.00 (A) Estimated
- B. Registration $ Incl. (B)
- C. Smog Impact Fee $ N/a (C)

TOTAL OFFICIAL FEES (A+B+C) $ 252.00 (2)

3. AMOUNT PAID TO INSURANCE COMPANIES: (Total premiums per Statement of Insurance a + b) $ N/a (3)

4. SMOG CERTIFICATION FEE PAID TO STATE $ N/a (4)

5. TOTAL (1 TO 4) $ 11797.41 (5)

6.
- A. Trade-In (Description)
  - Yr Make
  - Model $ N/a (A)
  - V.I.N.
  - Odometer
- B. Less Pay Off $ N/a (B)
- C. TRADE-IN (A less B) $ N/a (C)
- D. Deferred downpayment due before second installment payment $ 650.00 (D)
- E. MFR'S Rebate $ 750.00 (E)
- F. Remaining cash downpayment $ N/a (F)

TOTAL DOWNPAYMENT (6C+D+E+F) $ 1400.00 (6)

7. AMOUNT FINANCED (5 less 6) $ 10397.41 (7)

PREPAYMENT REFUND: Any refund for prepayment in full will be calculated as follows:
☐ according to the Actuarial Method

DATE PRIMARY BUYER AGE

X [illegible] ID-1

DATE CO-BUYER AGE

INVOLUNTARY UNEMPLOYMENT INSURANCE

I request involuntary unemployment insurance and authorize the premium shown ... to be included in the balance payable under this security agreement.

...LUNTARY UNEMPLOYMENT ____ MONTHS PREMIUM $ ____ (c)

...u are eligible for involuntary unemployment insurance only if you are currently working for salary or wages 30 hours a week or more and have done so for at least the last 12 months and you are not self employed or an independent contractor. Only the Primary Buyer is eligible for involuntary unemployment insurance.

Date ____ Primary Buyer X ____

BROKER FEE DISCLOSURE

If this Contract reflects the retail sale of a new motor vehicle the sale is not subject to a fee received by an autobroker unless the following box is checked:

☐ Name of Autobroker receiving fee, if applicable:

____

____

Sum of the Periodic Time Balances)

VEHICLE USE: ☒ Personal, Family or ...sehold ☐ Commercial or Agricultural

OFFICIAL FEES (Not Financed): The b... will pay the estimated fee(s) of $ 10.00 to the appropriate public authority in order to transfer registration after payment in full.

OPTION: ☐ You pay no finance charge if the amount financed, item 7, is paid in full on or before ____ 19 ____. SELLERS INITIALS ____

SERVICE CONTRACT (Optional) You request a service contract written with the following company for the term below. The cost is shown in item (1G) above.

Company ____ Term N/A Months

Buyer X [illegible] X Diane L. Hartley

SELLER ASSISTED LOAN: FOR THIS LOAN, BUYER MAY BE REQUIRED TO PLEDGE SECURITY AND WILL BE OBLIGATED FOR THE INSTALLMENT PAYMENTS ON BOTH THE SECURITY AGREEMENT AND THE LOAN.

Proceeds of Loan - From ____

Amount $ N/A Finance Charge $ N/A Total $ N/A

Payable ____ installments of $ ____

$ ____ from this loan is described in (6D) above.

If you have a complaint concerning this sale, you should try to resolve it with the seller.
Complaints concerning unfair or deceptive practices or methods by the seller may be referred to the city attorney, the district attorney, or the Department of Motor Vehicles, Division of Investigations and Occupational Licensing, P.O. Box 93289, Sacramento, California 94232-3890, or any combination thereof.
After this contract is signed, the seller may not change the financing or payment terms unless you agree in writing to the change. You do not have to agree to any change, and it is an unfair or deceptive practice for the seller to make a unilateral change.

Buyer's Signature X [illegible] X Diane L. Hartley

THE MINIMUM PUBLIC LIABILITY INSURANCE LIMITS THAT ARE IN LAW MUST BE MET BY EVERY PERSON WHO PURCHASES A VEHICLE. IF YOU ARE UNSURE WHETHER OR NOT YOUR CURRENT INSURANCE POLICY WILL COVER YOUR NEWLY ACQUIRED VEHICLE IN THE EVENT OF AN ACCIDENT, YOU SHOULD CONTACT YOUR INSURANCE AGENT.
WARNING: YOUR PRESENT POLICY MAY NOT COVER COLLISION DAMAGE OR MAY NOT PROVIDE FOR FULL REPLACEMENT COSTS FOR THE VEHICLE BEING PURCHASED. IF YOU DO NOT HAVE FULL COVERAGE, SUPPLEMENTAL COVERAGE FOR COLLISION DAMAGE MAY BE AVAILABLE TO YOU THROUGH YOUR INSURANCE AGENT OR THROUGH THE SELLING DEALER. HOWEVER, UNLESS OTHERWISE SPECIFIED, THE COVERAGE YOU OBTAIN THROUGH THE DEALER PROTECTS ONLY THE DEALER, USUALLY UP TO THE AMOUNT OF THE UNPAID BALANCE REMAINING AFTER THE VEHICLE HAS BEEN REPOSSESSED AND SOLD.
FOR ADVICE ON FULL COVERAGE THAT WILL PROTECT YOU IN THE EVENT OF LOSS OR DAMAGE TO YOUR VEHICLE, YOU SHOULD CONTACT YOUR INSURANCE AGENT.
THE BUYER SHALL SIGN TO ACKNOWLEDGE THAT HE / SHE UNDERSTANDS THESE PUBLIC LIABILITY TERMS AND CONDITIONS.

S/S X [illegible] X Diane L. Hartley

THERE IS NO COOLING OFF PERIOD

California law does not provide for a "cooling off" or other cancellation period for ...hicle sales. Therefore, you cannot later cancel this contract simply because you ...ange your mind, decide the vehicle costs too much, or wish you had acquired a different vehicle. After you sign below, you may only cancel this contract with the agreement of the seller or for legal cause, such as fraud.

Buyer acknowledges that (1) before signing this agreement Buyer read both sides of this agreement and received a legible, completely filled-in copy of this agreement; and (2) Buyer has received a copy of every other document that Buyer signed during the contract negotiation.

Buyer's Signature X [illegible] Co-Buyer's Signature X Diane L. Hartley

Seller ____ Address [illegible] FWY., RIVERSIDE, CA 92504

By X [illegible] Title [illegible]

TRUTH IN LENDING COPY 1. Give to BUYER prior to signing. 2. BUYER and SELLER Sign this copy AFTER contract is signed.

50053265

HYUNDAI

Hyundai Motor America
10550 Talbert Avenue
P.O. Box 20850
Fountain Valley, CA 92728-0850
Telephone 714 965-3000

WRITER'S DIRECT DIAL TELEPHONE:
(714) 965-3320

WRITER'S DIRECT DIAL FAX NO.:
(714) 965-3834

March 9, 1998

Mr. and Mrs. Martinez
15181 Van Buren, #26
Riverside, CA 92540

Dear Mr. and Mrs. Martinez:

Hyundai Motor America is in the process of evaluating your request for assistance relating to an accident in your Hyundai Accent. On February 10, 1998, we sent a letter to you requesting additional information. As of today, we have not received any of the documentation from you.

Please forward the following documents as soon as possible:

a. Photographs of your damaged Hyundai, including:
   (1) front end, sides and rear
   (2) engine compartment
   (3) front and rear interior
   (4) VIN plate (top left side of dashboard, next to windshield

b. Any documents reflecting payments to you by your insurance company.

c. An itemized list of the damages you are claiming, including lender information, and attach any supporting documents you may have in your possession.

d. A description of the Hyundai vehicle, including the 17-digit Vehicle Identification Number and mileage.

e. All reports indicating the cause of the fire (fire department, police department, etc.)

f. The date, location and details of the incident, including the usage of the vehicle prior to the fire.

g. Purchase agreement/bill of sale.

h. Repair/maintenance invoices in your possession.

50053270

I would also like to refer you to your Owner's Manual, pages 1-14 through 1-16 and the enclosed airbag brochures for information relating to the operation of the airbag system in your vehicle.

We are unable to complete our evaluation until the above documentation is received. Thank you for your cooperation.

Sincerely,

Sandy Zielomski
Consumer Affairs Supervisor
Western Region

sz/martinez-pir

50053271

File: 421220 - Status: X3 - VIN: KMHVF14N0SU166428 Model: Accent (X3) 1995

MARTINEZ, LUCIANO
15181 VAN BUREN BLVD # 26
RIVERSIDE, CA 92540

File	Type	Line	Comment Contents
421220	O	1	2-6-98 (JHANSEN) CUST STATES:
		2	1. HER HUSBAND WAS HIT FROM BEHIND ON THE FREEWAY AND WAS PUSHED INTO THE
		3	VEHICLE IN FRONT OF THEM AND THE AIRBAGS NEVER DEPLOYED AND THE SEATS WERE
		4	ROLLING FORWARD AND BACK AND FOLDED.
		5	2. THE VEHICLE THAT HIT THEM WAS TRAVELING AT ABOUT 60MPH.
		6	3. THERE WERE THREE CARS INVOLVED.
		7	4. THERE WERE TWO PASSENGERS IN HER HUSBANDS VEHICLE AND BOTH WERE WEARING
		8	SEATBELTS.
		9	5. THE DRIVER HAD TO WEAR A NECKBRACE FOR A WEEK AND IS TAKING PAIN MEDS.
		10	THE PASSENGER HAS BRUISE ON HIS HEAD AND HAS A SORE NECK AND BACK.
		11	6. THE VEHICLE IS CURRENLTY AT HAMBLINS BODY/PAINT/ AND FRAME SHOP.
		12	(909) 689-8440
		13	7. THERE WAS A POLICE REPORT FILED. (CASE # 9855-CHP IN RANCHO CUCAMONGA)
		14	8. THERE WILL BE MEDICAL BILLS BECAUSE THE PASSENGER DOES NOT HAVE MED INS.
		15	BILLS FOR THE VEHILCE HAVE NOT BEEN ASESSED YET.
		16	9. THERE HAS ALSO BEEN AN INSURANCE REPORT FILED. (CLAIM# RM 937-14, CHERYL
		17	SMITH, MERCURY CASUALTY CO. (909) 637-6208.
		18	10. SHE WOULD LIKE TO HAVE THE VEHILCE INSPECTED TO SEE WHY THE SEATS WERE
		19	ROLLING AROUND AND WHY THE AIRBAGS DID NOT DEPLOY.
		20	11. SHE HAS NO PLANS OF BRINGING IT TO A DLRSHP AT THIS TIME.
		21	--WRITER ADVISED CUST THAT SHE WOULD BE SENT A LETTER REQUESTING DOCUMENTS
		22	ABOUT THE ACCIDENT. WRITER FORWARDING FILE TO REGION AND (JWILL) FOR "DOCREQ".

23 **********ATTN REGION**********

24 PLEASE NOTE THE ABOVE COMMENTS. FILE IS BEING SENT AS PIR. NO CLOSE NECESSARY.

25 **********

26 DCS MESSAGE SENT: 02/06/98 (FIRST MESSAGE)

27 DCS MESSAGE SENT: 02/09/98 (SECOND MESSAGE).

28 ----------

29 2/10/98 (JWILL) MAILED OUT "DOCREQ" LETTER TO THE CUSTOMER.

30 ********** OPENED FROM INQUIRY STATUS: 02/26/98 **********

31 -----

32 03/03/98 SZ/WRCA: PIR FORWARDED TO LEGAL DEPT.

33 ----------

34 3/23/98 (JWILL) IN LETTER DATED 3/4/98, CUSTOMER STATES:

35 1. WHEN CUSTOMER WAS IN AN AUTOMOBILE ACCIDENT, THE DRIVER'S SEAT

36 DID NOT STAY STATIONERY, AND THE AIRBAGS DID NOT DEPLOY.

37 2. CUSTOMER STRUCK STEERING WHEEL RESULTING IN INJURY.

File: 421220 - Status: X3 - VIN: KMHVF14N0SU166428 Model: Accent (X3) 1995

MARTINEZ, LUCIANO
15181 VAN BUREN BLVD # 26
RIVERSIDE, CA 92540

File	Type	Line	Comment Contents
		38	3. VEHICLE WAS A "TOTAL LOSS".
		39	4. WOULD LIKE TO BE ABLE TO ENDORSE THE HYUNDAI NAME, AND IS REQUESTING
		40	HMA ASSISTANCE.
		41	--WRITER NOTES THAT CUSTOMER INCLUDED REQUESTED INFORMATION FROM
		42	"DOCREQ" LETTER. WRITER WILL FORWARD FILE TO THE LEGAL DEPARTMENT AND
		43	RETAIN COPIES FOR OUR FILES.
		44	----------
		45	3/30/98 (JWILL) WRITER RECEIVED LCAAR BACK FROM THE LEGAL DEPARTMENT STATING
		46	THAT WRCA WAS TO HANDLE THE CUSTOMER'S FILE. WRITER WILL FORWARD.
	R	1	PIR TO REGION ON 3-2-98
	S	1	SEE ABOVE

421220

Luciano Martinez
3727 Monroe St. #1
Riverside, CA. 92504
RE: File #421220

March 4, 1998

Hyundai Motor America
10550 Talbert Ave.
P.O. Box 20850
Fountain Valley, CA. 92728-0850

MAR 23 1998
Consumer Affairs Dept

Dear Department 011:

I am writing this letter because on February 4, 1998 I was involved in a automobile accident. In the accident I was allowed to be thrown forward when hit from behind and back when my car struck another. The seats did not stay in position and the air bags did not deploy. I struck the steering wheel and was injured. My passanger was also injured, we both suffered from back and neck pain. I realize In any accident I would be some what hurt. My reason for writing and filing this complaint is that when I purchased my Hyundai I believed I was buying a safe car for my family. It was equipped with air bags and anti lock brakes to add to my safety. I was dissappointed and frieghtened to find that under a real life test the only thing that protected me and my passenger was the seat belts. The air bags and seats failed. To add insult to injury I was informed by my insurance company's body shop that my car was a total loss not from the accident but because two years earlier my car was rear ended before and was repaired by Quaid Imports a Hyundai Dealership 8330 Indiana Ave. in Riverside. The repair was not done right to the rear left frame causing even more damage to be done in the same spot. To try and deal with the matter on Feb. 12 my wife called Quaid Imports to discuss the problem. She spoke to Scott in their service dept. He was extremely rude and uninterested in the problem. He stated that he was an estimator for his dept. so, my wife asked to speak with the supervisor to which he replied that the supervisor would not say anything he hasn't and there was no need to talk to him.

Needless to say our experience with the Hyundai name has been less than favorable. I only want to be treated fairly and with a little respect. I do not want to end this whole ordeal still feeling this way about Hyundai. My wife and I bought a new Hyundai with confidence in your company once before, I only hope we don't have to be sorry for our decision and never buy one again. We would like to be able to endorse your car and company to our friends and family in the future; just as we had done prior to all of this headache.

SINCERELY

Luciano Martinez
(909)688-8550

50053146D

MERCURY INSURANCE GROUP
P.O. Box 59974, Riverside, CA. 92517 (909) 637-6200

FEBRUARY 24, 1998

Luciano Martinez
3727 Monroe Street, #1
Riverside, CA 92504

Re: Date of Loss: February 4, 1998
Our Insured: Diane Martinez
Our Claim Number: RM000937-14

Dear Mr. Martinez:

For your records, enclosed is a copy of the Traffic Collision Report in reference to the above captioned loss.

Sincerely,
MERCURY CASUALTY COMPANY

CHERYL SMITH-LESSNICK
Senior Claims Representative
Riverside Branch
909/637-6208

CSL/ja
Enclosures

50053147D

TE OF CALIFORNIA
TRAFFIC COLLISION REPORT

PAGE 1 OF 9

TIAL CONDITIONS	NO INJ	H&R FEL.	CITY	JUDICIAL DISTRICT	NUMBER
	2	[X]	ONTARIO	WEST VALLEY	9802003S
	NO KILL	H&R MISD	COUNTY	DIST / BEAT	
	0	[ ]	SAN BERNARDINO	103	

LOCATION

COLLISION OCCURRED ON:	MO DAY YEAR	TIME(2400)	NCIC	OFFICER I.D.
I-10 W/B (SAN BERNARDINO)	02 04 98	1755	9855	014831
MILEPOST INFORMATION: 180 feet W of MP 10 SBD 05.28	DAY OF WEEK: WEDNESDAY	TOW AWAY: [ ] YES [X] NO	PHOTOGRAPHS BY:	
[ ] AT INTERSECTION WITH: OR: 100 feet W of 4TH STREET		STATE HWY. REL.: [X] YES [ ] NO	[X] NONE	

PARTY 1

DRIVER'S LICENSE NUMBER	STATE	CLASS	SAFETY	VEH YR	MAKE/MODEL/COLOR	LICENSE NUMBER	STATE
					VOLKS JETTA WHITE		

RIVER [X]
NAME(FIRST,MIDDLE,LAST): 20001(A) V.C.
EDES-RIAN [ ]
STREET ADDRESS:
ARKED EHICLE [ ]
CITY/STATE/ZIP:
OWNER'S NAME: [ ] SAME AS DRIVER
OWNER'S ADDRESS: [ ] SAME AS DRIVER

ICY-LIST [ ]	SEX	HAIR	EYES	HEIGHT	WEIGHT	BIRTHDATE	RACE
	F	GRY		5-05			

DISPO OF VEHICLE ON ORDERS OF: [ ] OFFICER [X] DRIVER [ ] OTHER: DRIVEN AWAY
THER [ ]
HOME PHONE: ( ) NONE
BUSINESS PHONE: ( ) NONE
PRIOR MECHANICAL DEFECTS: NONE APPARENT [X] REFER TO NARRATIVE [ ]
INSURANCE CARRIER:
POLICY NUMBER:
CHP USE ONLY VEHICLE TYPE: 01
DESCRIBE VEHICLE DAMAGE: [X] UNK [ ] NONE [ ] MINOR [ ] MOD. [ ] MAJOR [ ] TOTAL
SHADE IN DAMAGED AREA

DIR TRV	ON STREET OR HIGHWAY	SPD LMT	PCF
W	I-10	65	

PARTY 2

DRIVER'S LICENSE NUMBER	STATE	CLASS	SAFETY	VEH YR	MAKE/MODEL/COLOR	LICENSE NUMBER	STATE
A7836735	CA	C	M	95	HYUN 2 DOOR GREEN	3PPY683	CA

RIVER [X]
NAME(FIRST,MIDDLE,LAST): LUCIANO MARTINEZ
EDES-RIAN [ ]
STREET ADDRESS: 15181 VAN BUREN BLVD #263
ARKED EHICLE [ ]
CITY/STATE/ZIP: RIVERSIDE CA 92504
OWNER'S NAME: [X] SAME AS DRIVER
OWNER'S ADDRESS: [X] SAME AS DRIVER

ICY-LIST [ ]	SEX	HAIR	EYES	HEIGHT	WEIGHT	BIRTHDATE	RACE
	M	BLK	BRN	6-00	175	01 06 72	

DISPO OF VEHICLE ON ORDERS OF: [ ] OFFICER [X] DRIVER [ ] OTHER: DRIVEN AWAY
THER [ ]
HOME PHONE: ( ) NONE
BUSINESS PHONE: ( ) NONE
PRIOR MECHANICAL DEFECTS: NONE APPARENT [X] REFER TO NARRATIVE [ ]
INSURANCE CARRIER: MERCURY
POLICY NUMBER: AP34018732
CHP USE ONLY VEHICLE TYPE: 01
DESCRIBE VEHICLE DAMAGE: [ ] UNK [ ] NONE [ ] MINOR [X] MOD. [ ] MAJOR [ ] TOTAL
SHADE IN DAMAGED AREA

DIR TRV	ON STREET OR HIGHWAY	SPD LMT	PCF
W	I-10	65	

PARTY 3

DRIVER'S LICENSE NUMBER	STATE	CLASS	SAFETY	VEH YR	MAKE/MODEL/COLOR	LICENSE NUMBER	STATE
A2213000	CA	C	G	91	FORD ESCORT BLUE	2UXP068	CA

RIVER [X]
NAME(FIRST,MIDDLE,LAST): TONY TRUJILLO
EDES-RIAN [ ]
STREET ADDRESS: 650 E. BONITA AVE #1106
ARKED EHICLE [ ]
CITY/STATE/ZIP: SAN DIMAS CA 91773
OWNER'S NAME: [X] SAME AS DRIVER
OWNER'S ADDRESS: [X] SAME AS DRIVER

C. LESSNICK FEB 23 1998 CLAIMS

FEB 17 1998

ICY-LIST [ ]	SEX	HAIR	EYES	HEIGHT	WEIGHT	BIRTHDATE	RACE
	M	BRN	HZL	5-04	130	08 21 70	

DISPO OF VEHICLE ON ORDERS OF: [ ] OFFICER [X] DRIVER [ ] OTHER: DRIVEN AWAY
ITHER [ ]
HOME PHONE: (909) 305-0380
BUSINESS PHONE: ( ) NONE
PRIOR MECHANICAL DEFECTS: NONE APPARENT [X] REFER TO NARRATIVE [ ]
INSURANCE CARRIER: MERCURY
POLICY NUMBER: AP09176669
CHP USE ONLY VEHICLE TYPE: 01
DESCRIBE VEHICLE DAMAGE: [ ] UNK [ ] NONE [ ] MINOR [X] MOD. [ ] MAJOR [ ] TOTAL
SHADE IN DAMAGED AREA

DIR TRV	ON STREET OR HIGHWAY	SPD LMT	PCF
W	I-10	65	22350 V.C.

REPARER'S NAME	DISPATCH NOTIFIED	REVIEWER'S NAME	DATE REVIEWED
DURBIN, K 014831	[ ] Yes [X] No [ ] N/A	14422	FEB 25 1998

50053148D

E OF CALIFORNIA

TRAFFIC COLLISION CODING

DATE OF ORIGINAL INCIDENT	TIME(2400)	NCIC NUMBER	OFFICER I.D.	NUMBER
02 - 04 - 98	1755	9855	014831	0BFZ22E3

PROPERTY	OWNERS NAME/ADDRESS	NOTIFIED
DAMAGE	DESCRIPTION OF DAMAGE	

SEATING POSITION

1 2 3
4 5 6
7

1 - DRIVER
2 to 6 - PASSENGERS
7 - STA. WGN. REAR
8 - RR. OCC. TRK. OR VAN
9 - POSITION UNKNOWN
0 - OTHER

SAFETY EQUIPMENT

OCCUPANTS
A - NONE IN VEHICLE
B - UNKNOWN
C - LAP BELT USED
D - LAP BELT NOT USED
E - SHOULDER HARNESS USED
F - SHOULDER HARNESS NOT USED
G - LAP/SHOULDER HARNESS USED
H - LAP/SHOULDER HARNESS NOT USED
J - PASSIVE RESTRAINT USED
K - PASSIVE RESTRAINT NOT USED
L - AIR BAG DEPLOYED
M - AIR BAG NOT DEPLOYED
N - OTHER
P - NOT REQUIRED

CHILD RESTRAINT
Q - IN VEHICLE USED
R - IN VEHICLE NOT USED
S - IN VEHICLE USE UNKNOWN
T - IN VEHICLE IMPROPER USE
U - NONE IN VEHICLE

M/C BICYCLE - HELMET
DRIVER
V - NO
W - YES

PASSENGER
X - NO
Y - YES

EJECTED FROM VEH

0 - NOT EJECTED
1 - FULLY EJECTED
2 - PARTIALLY EJECTED
3 - UNKNOWN

ITEMS MARKED BELOW WHICH ARE FOLLOWED BY AN ASTERISK (*) SHOULD BE EXPLAINED IN THE NARRATIVE

PRIMARY COLLISION FACTOR
LIST NUMBER (#) OF PARTY AT FAULT

	A VC SECTION VIOLATED: CITED
3	22350 V.C. ~~NO~~
	B OTHER IMPROPER DRIVING*
	C OTHER THAN DRIVER*
	D UNKNOWN*
	E FELL ASLEEP*

WEATHER (MARK 1 TO 2 ITEMS)

	A CLEAR
X	B CLOUDY
	C RAINING
	D SNOWING
	E FOG / VISIBILITY:
	F OTHER*:
	G WIND

LIGHTING

	A DAYLIGHT
	B DUSK- DAWN
	C DARK - STREET LIGHTS
X	D DARK - NO STREET LIGHTS
	E DARK - STREET LIGHTS NOT FUNCTION

ROADWAY SURFACE

X	A DRY
	B WET
	C SNOWY - ICY
	D SLIPPERY (MUDDY,OILY,ETC.)

ROADWAY CONDITIONS
MARK 1 TO 2 ITEMS

	A HOLES, DEEP RUTS*
	B LOOSE MATERIAL ON RDWY*
	C OBSTRUCTION ON ROADWAY*
X	D CONSTRUCTION - REPAIR ZONE
	E REDUCED ROADWAY WIDTH
	F FLOODED*
	G OTHER*:
	H NO UNUSUAL CONDITIONS

TRAFFIC CONTROL DEVICES

	A CONTROLS FUNCTIONING
	B CONTROLS NOT FUNCTIONING*
	C CONTROLS OBSCURED
X	D NO CONTROLS PRESENT/FACTOR

TYPE OF COLLISION

	A HEAD-ON
	B SIDESWIPE
X	C REAR END
	D BROADSIDE
	E HIT OBJECT
	F OVERTURNED
	G VEHICLE / PEDESTRIAN
	H OTHER*:

MOTOR VEHICLE INVOLVED WITH

	A NON-COLLISION
	B PEDESTRIAN
X	C OTHER MOTOR VEHICLE
	D MOTOR VEH ON OTHER ROADWAY
	E PARKED MOTOR VEHICLE
	F TRAIN
	G BICYCLE
	H ANIMAL:
	I FIXED OBJECT:
	J OTHER OBJECT:

PEDESTRIAN'S ACTIONS

X	A NO PEDESTRIAN INVOLVED
	B CROSSING IN XWALK/INTERSECTION
	C CROSSING IN XWALK NOT AT INTERSECTION
	D CROSSING NOT IN CROSSWALK
	E IN ROAD - INCLUDES SHOULDER
	F NOT IN ROAD
	G APPROACHING/LEAVING SCHOOL BUS

1	2	3	TYPE OF VEHICLE
			A PASSENGER CAR/STN. WGN.
			B PASSENGER CAR W / TRAILER
			C MOTORCYCLE / SCOOTER
			D PICKUP OR PANEL TRUCK
			E PICKUP/PANEL TRK. W/ TLR.
			F TRUCK OR TRUCK TRACTOR
			G TRK./TRK. TRACTOR W /TLR.
			H SCHOOL BUS
			I OTHER BUS
			J EMERGENCY VEHICLE
			K HWY. CONST. EQUIPMENT
			L BICYCLE
			M OTHER VEHICLE
			N PEDESTRIAN
			O MOPED

1	2	3	OTHER ASSOCIATED FACTOR MARK 1 TO 2 ITEMS
			A VC SECTION VIOLATION: CITE
			B VC SECTION VIOLATION: CITE
			C VC SECTION VIOLATION: CITE
			E VIS. OBSCURED:
			F INATTENTION*
			G STOP & GO TRAFFIC
			H ENTERING / LEAVING RAMP
			I PREVIOUS COLLISION
			J UNFAMILIAR WITH ROAD
			K DEFECTIVE VEH EQUIP.: CITE
			L UNINVOLVED VEHICLE
			M OTHER*:
X	X	X	N NONE APPARENT
			O RUNAWAY VEHICLE

1	2	3	MOVEMENT PRECEDING COLLISION
X	X		A STOPPED
—	—	X	B PROCEEDING STRAIGHT
			C RAN OFF ROAD
			D MAKING RIGHT TURN
			E MAKING LEFT TURN
			F MAKING U TURN
			G BACKING
			H SLOWING / STOPPING
			I PASSING OTHER VEHICLE
			J CHANGING LANES
			K PARKING MANEUVER
			L ENTERING TRAFFIC
			M OTHER UNSAFE TURNING
			N XING INTO OPPOSING LANE
			O PARKED
			P MERGING
			Q TRAVELING WRONG WAY
			R OTHER*:

1	2	3	SOBRIETY - DRUG PHYSICAL (MARK 1 TO 2 ITEMS)
	X	X	A HAD NOT BEEN DRINKING
			B HBD - UNDER INFLUENCE
			C HBD - NOT UNDER INFLUENCE
			D HBD - IMPAIRMENT UNK.*
			E UNDER DRUG INFLUENCE*
			F IMPAIRMENT - PHYSICAL*
X			G IMPAIRMENT NOT KNOWN
			H NOT APPLICABLE
			I SLEEPY / FATIGUED

SPECIAL INFORMATION

			A HAZARDOUS MATERIAL
			B SEATBELT FAILURE

SKETCH REFER TO PAGE 4

C. LESSNICK
FEB 23 1998
CLAIMS

MISCELLANEOUS

50053149D

TE OF CALIFORNIA

JURED/WITNESSES/PASSENGERS

ATE OF COLLISION	TIME(2400)	NCIC NUMBER	OFFICER I.D.	NUMBER
02 - 04 - 98	1755	9855	014831	0BFZ22E3

WITNESS ONLY	PASSENGER ONLY	AGE	SEX	EXTENT OF INJURY ('X' ONE)				INJURED WAS ('X' ONE)					PARTY NUMBER	SEAT POS.	SAFETY EQUIP	EJECTED
				FATAL INJURY	SEVERE INJURY	OTHER VISIBLE INJURY	COMPLAINT OF PAIN	DRIVER	PASS.	PED	BIKE	OTHER				
		26	M				X	X					2	1	M	0

AME/D.O.B /ADDRESS — TELEPHONE

LUCIANO MARTINEZ 01-06-72
H-15181 VAN BUREN BLVD #263, RIVERSIDE, CA, 92504

NJURED ONLY) TRANSPORTED BY: — TAKEN TO:

REFUSED TO BE TRANSPORTED. — WILL SEEK OWN MEDICAL AID.

ESCRIBE INJURIES:

PAIN TO R/SIDE OF NECK AND LOWER BACK.

[ ] VICTIM OF VIOLENT CRIME NOTIFIED

		22	M				X		X				2	3	M	0

AME/D.O.B./ADDRESS — TELEPHONE

MICHAEL PEZIWA 05-19-75
H-SAME AS P-2, , ,

NJURED ONLY) TRANSPORTED BY: — TAKEN TO:

REFUSED TO BE TRANSPORTED. — WILL SEEK OWN MEDICAL AID.

ESCRIBE INJURIES:

BUMP TO TOP R/SIDE OF HEAD. PAIN TO R/SIDE CHEEK BONE.

[ ] VICTIM OF VIOLENT CRIME NOTIFIED

AME/D.O.B /ADDRESS — TELEPHONE

NJURED ONLY) TRANSPORTED BY: — TAKEN TO:

ESCRIBE INJURIES:

[ ] VICTIM OF VIOLENT CRIME NOTIFIED

NAME/D O.B./ADDRESS — TELEPHONE

INJURED ONLY) TRANSPORTED BY: — TAKEN TO:

DESCRIBE INJURIES:

[ ] VICTIM OF VIOLENT CRIME NOTIFIED

NAME/D O B /ADDRESS — TELEPHONE

(INJURED ONLY) TRANSPORTED BY: — TAKEN TO:

DESCRIBE INJURIES:

[ ] VICTIM OF VIOLENT CRIME NOTIFIED

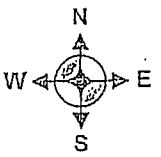
PREPARER'S NAME	I.D NUMBER	MO DAY YR	REVIEWER'S NAME	MO. DAY YR
DURBIN, K	014831	02-04-98		

STATE OF CALIFORNIA
NARRATIVE/SUPPLEMENTAL PAGE 4

DATE OF INCIDENT	TIME	NCIC NUMBER	OFFICER I D.	NUMBER
02/04/98	1755	9855	014831	98020

SKETCH

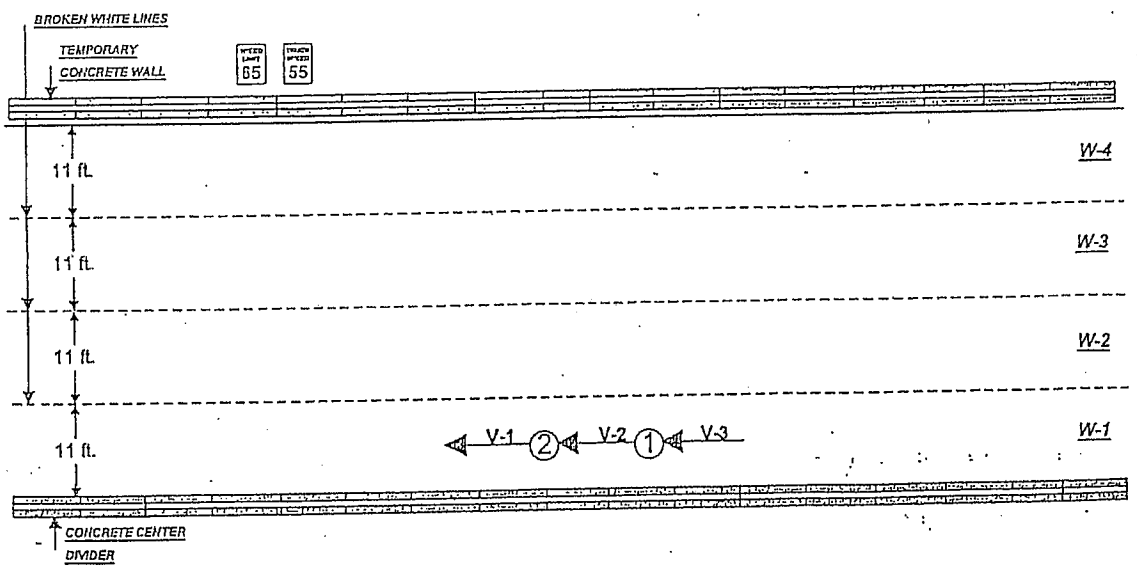
WESTBOUND
INTERSTATE 10



NOT TO SCALE

TO FOURTH ST. ⟶

ALL TRAFFIC LANES ARE CONSTRUCTED OF PORTLAND CEMENT



C. LESSNICK
FEB 23 1998
CLAIMS

PREPARER'S NAME	I.D. NUMBER	DATE	REVIEWER'S NAME	DATE
M OLSON	014154	02/04/98		

50053151D

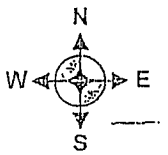
STATE OF CALIFORNIA

NARRATIVE/SUPPLEMENTAL PAGE 5

DATE OF INCIDENT	TIME	NCIC NUMBER	OFFICER I.D	NUMBER
02/04/98	1755	9855	014831	98020

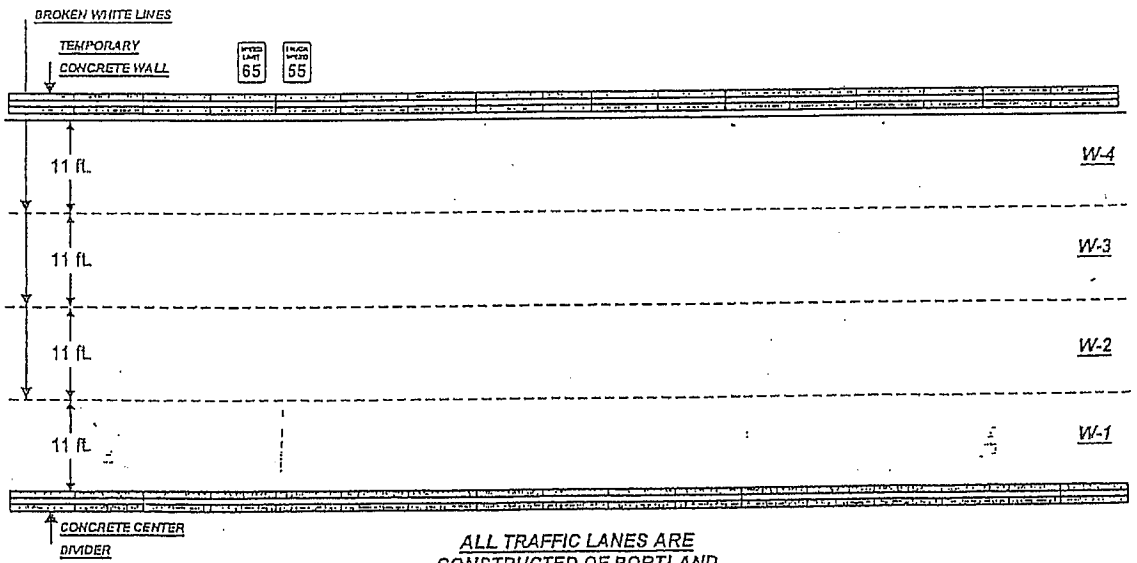
FACTUAL DIAGRAM

WESTBOUND
INTERSTATE 10



NOT TO SCALE

TO FOURTH ST. ——————→



ALL TRAFFIC LANES ARE CONSTRUCTED OF PORTLAND CEMENT

NOTE: VEHICLES WERE MOVED TO EXPEDITE THE FLOW OF TRAFFIC. VEHICLES ARE NOT SHOWN.

PREPARER'S NAME	I.D. NUMBER	DATE	REVIEWER'S NAME	DATE
M OLSON	014154	02/04/98		

FACTS:

NOTIFICATION:
I was dispatched to a call of a minor injury traffic collision at 2005 hours. I responded from W/B I-10 and Haven Ave and arrived at approx 2030 hours. Parties were directed by Officer M. Olson (#14154) to exit on Euclid Ave N/of the I-10 for a report. All times, speeds and measurements in this investigation are approximate. Measurements were taken by estimation, except where otherwise indicated.

SCENE:
At the scene of this collision, I-10 is an eastbound/westbound freeway consisting of four lanes each direction. Each lane is delineated by broken white painted lines. The roadway is relatively straight and level. Due to the construction, the W/B lanes are separated from the E/B lanes by a temporary concrete center divider wall and the N/edge of W/B I-10 is bordered by a concrete K-rail. The were no roadway obstructions or visual obscurements. The rdwy is constructed of concrete. Refer to diagram for further details.

PARTIES AND VEHICLES:

Party # 1 (P-1 (20001(A) V.C. Hit and Run Suspect):
P-1 fled the scene following the collision.

Volkswagen Jetta (V-1):
V-1 was driven away from the scene by P-1 following the collision.

Party #2 (P-2 Martinez):
P-2 was contacted, seated behind the steering wheel of V-2 and was identified by a California driver's license. P-2 was placed as the driver of V-2 by the following items:

- personal statements.
- injuries.
- being in possession of the keys.
- being the registered owner.
- P-3's statements.

Hyundai Coup (V-2):
V-2 was located on Euclid Ave N/of the I-10. V-2 was moved by P-2 to expedite the flow of traffic. V-2 sustained moderate damage to the rear bumper and trunk. V-2 also had damage to the front bumper, grill and hood. There were no prior mechanical defects or damage noted or claimed.

C. LESSNICK
FEB 23 1998
CLAIMS

DATE OF INCIDENT	TIME	NCIC NUMBER	OFFICER I.D.	NUMBER
02/04/97	1755	9855	014831	

Party #3 (P-3 Trujillo):
P-3 was contacted, seated behind the steering wheel of V-3. P-3 was identified by a description through dispatch using P-3's driver's license number A2213000 and DOB. The description came back from dispatch matching his physical appearance. P-3 was placed as the driver of V-3 by the following items:

- personal statements.
- being in possession of the keys.
- location.
- being the registered owner.
- ~~P-2's statements.~~

Ford Escort (V-3):
V-3 was located on Euclid Ave N/of I-10. V-3 was moved by P-3 to expedite the flow of traffic. V-3 sustained moderate damage to the front bumper, grill, headlights, hood and radiator. There were no prior mechanical defects or damage noted or claimed.

PHYSICAL EVIDENCE:
1. Vehicle damage.

STATEMENTS:

Party # 1 (P-1 (20001(A) Hit and Run Suspect):
P-1 fled the scene following the collision.

Party #2 (P-2 (Matinez):
P-2 related in essence that he was traveling W/B I-10 in the #1 lane stopped, because traffic in front of him was stopped. He stated he was behind a white Volkswagen Jetta (V-1) approx one and a half car lengths. P-2 said he was at a stop for about 3 seconds when he was suddenly struck from behind and then pushed forward into V-1. He said after the collision he and his passenger got out of the car to see if everyone was all right. P-2 stated that P-1 told him she didn't want to get involved and got back into her car and left. He said he didn't get a chance to get the license plate number.

Party #3 (P-3 (Trujillo):
P-3 related in essence he was W/B I-10 in the #1 lane at approx 40 mph. He stated that suddenly he came upon traffic stopped in the #1 lane. He said it happened so fast and unexpectedly that he didn't have time to apply his brakes and he collided into the rear of a green car (V-2).

PREPARER'S NAME	I.D. NUMBER	DATE	REVIEWER'S NAME
K DURBIN	014831	02/04/97	

DATE OF INCIDENT	TIME	NCIC NUMBER	OFFICER I.D.	NUMBER
02/04/97	1755	9855	014831	

HIT AND RUN FOLLOW-UP INFORMATION:

V-1 was described as a Volkswagen Jetta, white in color. According to the information given by P-2, V-1 had no damage. P-2 was unable to obtain a license plate number.

P-1 (20001(A) V.C. Hit and Run Suspect) was described as a white female in her mid 60s', approx 5-05 in height, gray hair and glasses, wearing a flower pattern blue dress. P-2 and his passenger said P-1 looked at her car and saw no apparent damage and said she did not want to be involved. P-2 said P-1 then got back into her car and left. P-2 was unable to provide any further information on P-1 or V-1. P-2 and his passenger ~~said they could positively identify P-1 as~~ the driver of V-1 if seen ~~again~~.

OPINIONS AND CONCLUSIONS

SUMMARY:

P-1 (20001(A) V.C. Unknown Hit and Run Suspect) was W/B I-10 in the #1 lane, stopped.
P-2 (Matinez) was W/B I-10 in the #1 lane, stopped behind V-1 approx. one and a half car lengths.
P-3 (Trijillo) was W/B I-10 in the #1 lane, approaching the rear of V-2 at approx 40 mph. P-3 unexpectedly came upon stopped traffic and was unable to apply his brakes to stop or slow down and struck the rear of V-2. The impact pushed V-2 forward into the rear of V-1. Following the collision, P-1 fled the scene in V-1. P-2 and P-3 exited Euclid Ave, N/of the I-10 for a report.

Opinions and conclusions were based upon physical evidence and statements.

AREA OF IMPACT (AOI):

AOI #1 occurred approx 100 ft. W/of the W/edge of Fourth St. and approx 38 ft. S/of the N/rdwy edge of W/B I-10.
AOI #2 occurred approx 125 ft. W/of the W/edge of Fourth St. and approx 38 ft. S/of the N/rdwy edge of W/B I-10.

CAUSE:

P-3 (Trijillo) caused this collision by driving V-3 in violation of section 22350 V.C.- Unsafe speed for conditions.
P-1 (20001(A) V.C. Hit and Run Suspect) is in violation of section 20001(A) V.C.- Leaving the scene of a collision resulting in injury without exchanging information.

C. LESSNICK
FEB 23 1998
CLAIMS

PREPARER'S NAME	I.D. NUMBER	DATE	REVIEWER'S NAME
K DURBIN	014831	02/04/97	

DATE OF INCIDENT	TIME	NCIC NUMBER	OFFICER I.D.	NUMBER
02/04/97	1755	9855	014831	

RECOMMENDATIONS:

No recommendations can be made due to no disinterested, independent witnesses and the lack of information for follow-up on P-1 (20001(A) V.C. Hit and Run Suspect). Should additional information become available which would place P-1 as the driver of V-1, it will be added to this report as a supplemental and prosecution will be recommended.

C. LESSNICK
FEB 23 1998
CLAIMS

PREPARER'S NAME	I.D. NUMBER	DATE	REVIEWER'S NAME
K DURBIN	014831	02/04/97	

DAMAGE REPORT
10/19/96 at 12:22
AA-099924

Scott, estimator

MARTINEZ
D.R. 33393-1092713
Est: M. CHRISTIAN

QUAID IMPORTS

Coast Body Shop
8330 INDIANA AVE.
RIVERSIDE, CA 92504-
(909) 688-9420-232

Owner: LUCKINO MARTINEZ
Address: 15181 VAN BUREN BLVD
RIVERSIDE CA

Day Phone: ( ) - -
Other Ph: ( ) - -
Deductible: $ N/A

Insurance Co.:
Claim No.:

Phone:
Adj.:

95 HYUN ACCENT 4D SED BLUE/GREEN 4-1.5L-FI
Vin: KMHVF14N0SU166428 License: 3PPY683 CA Prod Date: 0/ 0 Odometer: 13

Automatic transmission	Power steering	Tinted glass
Air conditioning	Am radio	Fm radio
Stereo	Cassette	Anti-lock brakes (4)
Clear coat paint	California emissions	

NO.	OP.	DESCRIPTION OF DAMAGE	QTY	PART COST	LABOR	PAINT	MIS
1		REAR BUMPER					
2	Repl	Bumper cover 4 door	1	123.70	1.2	2.6	
3		Add for Clear Coat	1			1.0	
4	Repl	Bumper cover retainer	1	2.32			
5	Repl	Bumper cover grommet	1	0.17			
6	Repl	Bumper cover side reinf	1	2.39			
7	Repl	Bumper cover nut	1	0.34			
8	Repl	RT Mount bracket 4 door	1	23.79			
9	Repl	LT Mount bracket 4 door	1	23.79			
10	Repl	Mount bracket retainer	1	1.47			
11	Repl	Energy absorber 4 door	1	143.93			
12	Repl	Reinf beam 4 door	1	301.54			
13		REAR LAMPS					
14	Repl	LT Rear lamp assy	1	77.47	0.4		
15		TRUNK LID					
16*	Repr	Trunk lid	1		3.0	3.1	
17		Add for Clear Coat	1			1.2	
18	Repl	LT Hinge	1	40.07	0.3	0.3	
19		REAR BODY & FLOOR					
20*	Repr	Panel below lid	1		5.0	1.7	
21		Overlap Major Adjacent Panel	1			-0.4	
22		Add for Clear Coat	1			0.3	
23*	Repr	Rear floor pan	1		5.0	1.5	
24*	Repl	REAR FLOOR SOUND DEADNER	1	5.00	0.5		
25		QUARTER PANEL					

50053157D

DAMAGE REPORT
10/19/96 at 12:22
AA-099924

MARTINEZ
D.R. 33393-109271
Est: M. CHRISTIAN

QUAID IMPORTS

8330 INDIANA AVE
RIVERSIDE, CA 92504-
(909) 688-9420-232

NO.	OP.	DESCRIPTION OF DAMAGE	QTY	PART COST	LABOR	PAINT	MI
26*	Repr	LT Quarter panel	1		5.0	2.0	
27		Overlap Major Adjacent Panel	1			-0.4	
28*		Add for Clear Coat	1			0.3	
29*		FRAME SET UP	1		3.0		F
30*		PULL & SQUARE	1		5.0		F
31		FRONT SUSPENSION					
32	Repl	Whl algnmnt algn fr whls	1		1.9		M
33*		BLEND ADJACENT PANELS	1		2.0		
34*		COVER CAR	1		0.5		T 5
35*		COLOR MATCH	1			1.0	
36*		COLOR SAND & BUFF	1		2.5		
37*		FLEX ADDITIVE	1				T 12
38*		HAZARDOUS WASTE DISPOSAL	1				T 5
39*		PINSTRIPES-TAPE	1				X 25
40*		UNDERCOAT	1	5.00	0.5		
		Subtotals ===>		750.98	35.8	14.2	47

50053158D

DAMAGE REPORT
10/19/96 at 12:22
AA-099924

MARTINEZ
D.R. 33393-1092713
Est: M. CHRISTIAN

QUAID IMPORTS

8330 INDIANA AVE
RIVERSIDE, CA 92504-
(909) 688-9420-232

Parts				75
Body Labor	25.9	units @	$28.00	72
Paint Labor	14.2	units @	$28.00	39
Paint/Materials	14.2	units @	$18.00	25
Frame Labor	8.0	units @	$45.00	36
Mech. Labor	1.9	units @	$51.00	9
Sublet/Misc				4
SUBTOTAL				$ 263
Tax on $ 1029.08 at 7.7500%				7
GRAND TOTAL				$ 271
INSURANCE PAYS				$ 271

Estimate based on MOTOR CRASH ESTIMATING GUIDE. Non-asterisk(*) items are derived from the Guide IRR1040. Database Date 6/96
Double asterisk(**) items indicate part supplied by a supplier other than the original equipment manufacturer.
CAPA items have been certified for fit and finish by the Certified Auto Parts Association.
EZEst - A product of CCC Information Services Inc.

50053159D

Mercury Insurance Group
555 W. Imperial Hwy. • Brea, California 92821 • 714/671-6600

February 20, 1998

Diane R Martinez
3727 Monroe St. #1
Riverside, CA. 92504

RE: Claim #: RM000937-14
Date of Loss: February 04, 1998

Dear Ms. Martinez:

As per your request, enclosed is a copy of the estimate from Humblin's Body Paint & Frame

If you have any questions, feel free to contact me between the hours of 8:00 AM and 4:45 PM, Monday through Friday at (714) 255-5293.

Sincerely,
MERCURY CASUALTY COMPANY

Debby Graham
Total Loss Specialist

cc: Cheryl Smith, Claims Branch 13

DB/dg

50053160D

Date: 02/12/98 08:03 AM
Estimate ID: RM000937-14
Committed
Profile ID: MERCURY

HAMBLINS BODY PAINT & FRAME
7550 Cypress Ave RIVERSIDE, CA 92503
(909) 689-8440
Fax: (909) 689-7363

Damage Assessed By: KEN PEDERSEN

Appraised For: CHERYL SMITH LESSNICK
(909) 637-6208

Condition Code: Good
Date of Loss: 2/04/98
Deductible: 500.00
Policy No: AP34018732

Type of Loss: Collision

Claim Number: RM000937-14

TOTAL LOSS

Insured: DIANE R MARTINEZ
Address: 3727 MONROE STREET #1 RIVERSIDE, CA 92504
Telephone: Work Phone: (909) 390-3944 Home Phone: (909) 688-8550

Mitchell Service: 910723

Description: 1995 Hyundai Accent
Body Style: 4D Sed
VIN: KMHVF14N0SU166428
Mileage: 35,833
Color: TEAL GREEN

Vehicle Production Date: 3/95
Drive Train: 1.5L Inj 4 Cyl 5M
License: 3PPY683 CA

Line Item	Entry Number	Labor Type	Operation	Line Item Description	Part Type/ Part Number	Dollar Amount	Labor Units	CEG Unit
1	000005	BDY	REMOVE/REPLACE	INFORM LABEL EMISSION CONTROL	32450-22330	6.18	1.8	1.8 T
2	AUTO	BDY	OVERHAUL	FRT COVER ASSY				
3	000015	BDY	REMOVE/REPLACE	FRT BUMPER COVER	Recored	120.00 *	INC #	1.8T
4	AUTO	REF	REFINISH	FRT BUMPER COVER			C 2.3	2.3
5	000022	BDY	REMOVE/REPLACE	R FRT BUMPER BRACKET	86538-22000	17.03	INC	T
6	000023	BDY	REMOVE/REPLACE	L FRT BUMPER BRACKET	86537-22000	17.03	INC	T
7	000024	BDY	REMOVE/REPLACE	FRT UPR CTR BUMPER BRACKET	86532-22000	34.11	INC	T
8	000025	BDY	REMOVE/REPLACE	FRT BUMPER COVER RETAINER	86590-28000	9.20 *	INC	T
9				8 CLIPS @1.15EA				
10	000029	BDY	REMOVE/REPLACE	R FRT BUMPER REINFORCEMENT BRKT	86535-22000	1.92	INC	T
11	000030	BDY	REMOVE/REPLACE	L FRT BUMPER REINFORCEMENT BRKT	86535-22000	1.92	INC	T
12	000032	BDY	CHECK/ADJUST	HEADLAMPS			0.4	0.4
13	000037	BDY	REMOVE/REPLACE	R H/LAMP ASSEMBLY	92102-22050	160.05	INC #	0.4T
14	000038	BDY	REMOVE/REPLACE	L H/LAMP ASSEMBLY	92101-22050	160.05	INC #	0.4T
15	000057	BDY	REMOVE/REPLACE	R PARK/SIGNAL/MKR LAMP ASSEMBLY	92306-22050	30.39	INC #	0.2T
16	000058	BDY	REMOVE/REPLACE	L PARK/SIGNAL/MKR LAMP ASSEMBLY	92305-22050	30.39	INC #	0.2T
17	000067	BDY	REPAIR	COOLING RADIATOR	Sublet	75.00 *	0.8*	0.8
18	002329	BDY	REMOVE/REPLACE	HOOD PANEL	66400-22021	217.47	1.0	1.0T
19	AUTO	REF	REFINISH	HOOD OUTSIDE			C 2.7	2.7
20	AUTO	REF	REFINISH	HOOD UNDERSIDE			C 1.3	1.3
21	000110	BDY	REMOVE/REPLACE	HOOD ADHESIVE EMBLEM	86341-22200	6.37	0.1	0.2
22	000114	BDY	REMOVE/REPLACE	R FRT OTR HOOD SEAL	86447-22000	9.94	INC	0.2
23	000115	BDY	REMOVE/REPLACE	L FRT OTR HOOD SEAL	86437-22000	9.94	INC	0.2
24	000116	BDY	REMOVE/REPLACE	FRT CTR HOOD SEAL	86435-22000	8.89	INC	0.2
25	000123	BDY	REMOVE/REPLACE	HOOD PRIMARY LATCH	81130-22002	26.46	INC	0.3
26	000190	REF	BLEND	R FENDER OUTSIDE			C 0.8	2.0
27	000191	REF	BLEND	L FENDER OUTSIDE			C 0.8	2.0
28	000194	BDY	REMOVE/INSTALL	R FENDER ASSY			0.8 #	0.8

TOTAL LOSS

ESTIMATE RECALL NUMBER: 2/12/98 08:02:44 RM000937-14

Mitchell Data Version: FEB_98_A

50053161D

Date: 02/12/98 08:03 AM
Estimate ID: RM000937-14
Committed
Profile ID: MERCURY

29	000195	BDY	REMOVE/INSTALL	L FENDER ASSY				0.8 #	0.8	
30	002053	BDY	REMOVE/REPLACE	FRONT BODY RADIATOR SUPPORT	-S	64100-22300	173.54	7.1 #	7.5T	
31	AUTO	REF	REFINISH	RADIATOR SUPPORT COMPLETE				1.5	1.5	
32	000569	BDY	REMOVE/INSTALL	CTR EXHAUST PIPE		Existing		0.5*	0.5	
33	000570	BDY	REMOVE/INSTALL	EXHAUST MUFFLER W/PIPE		Existing		0.5*	0.5	
34	000827	BDY	REMOVE/REPLACE	L FRT INR SEAT DRIVER SIDE TRACK		88525-22100	63.23	0.8 #	0.8T	
35	000830	BDY	REMOVE/REPLACE	L FRT OTR SEAT TRACK COVER		88283-22010	12.74	0.2	0.2T	
36	001251	BDY	REMOVE/REPLACE	R QUARTER OUTER PANEL		71504-223A0	355.72	16.0 #	16.0T	
37	AUTO	REF	REFINISH	R QUARTER PANEL OUTSIDE				C 2.0	2.4	
38	AUTO	REF	REFINISH	R LOCK PILLAR				C 0.5	0.5	
39	AUTO	REF	REFINISH	R ADD FOR INSIDE				0.5	0.5	
40	001252	BDY	REPAIR	L QUARTER OUTER PANEL		Existing		5.0* #	16.5	
41	AUTO	REF	REFINISH	L QUARTER PANEL OUTSIDE				C 2.0	2.4	
42	001309	BDY	REMOVE/REPLACE	LUGGAGE LID PANEL		69200-22010	372.23	1.2	1.2T	
43	AUTO	REF	REFINISH	LUGGAGE LID OUTSIDE				C 1.8	2.2	
44	AUTO	REF	REFINISH	LUGGAGE LID UNDERSIDE				C 1.1	1.1	
45	001315	BDY	REMOVE/REPLACE	L UPR LUGGAGE LID ADHESIVE NAMEPLATE		ORDER FROM DEALER	9.06	0.2	0.2T	
46	001343	BDY	REMOVE/REPLACE	LUGGAGE LID LATCH ASSY		69130-22000	18.83	0.3	0.3T	
47	001346	BDY	REMOVE/REPLACE	LUGGAGE LID LATCH STRIKER		69120-29000	13.54	INC	0.2T	
48	001350	BDY	REMOVE/INSTALL	LUGGAGE LID WEATHERSTRIP		Existing		0.4*	0.4	
49	001482	BDY	REMOVE/REPLACE	REAR BODY PANEL		69100-22300	257.95	4.5 #	6.5T	
50	AUTO	REF	REFINISH	REAR BODY PANEL				C 1.4	1.8	
51	AUTO	REF	REFINISH	ADD FOR EDGE & INSIDE				0.8	0.8	
52	001483	BDY	REMOVE/REPLACE	REAR BODY FLOOR PAN		65511-22300	257.25	16.5 #	16.5T	
53		REF	REFINISH/REPAIR	REAR BODY FLOOR PAN				0.5*		
54	001484	BDY	REMOVE/REPLACE	REAR BODY JACK BRACKET		65514-22000	6.58	0.6	0.6T	
55	900500	FRM*	REPAIR	UNIBODY FRONT		Existing		3.0*		
56	001485	BDY	REMOVE/REPLACE	REAR BODY SPARE MOUNT BRACKET		65515-22000	2.77	0.4	0.4T	
57	001486	BDY	REMOVE/REPLACE	R REAR BODY RAIL		65720-22300	258.12	4.5 #	7.0T	
58	001487	BDY	REMOVE/REPLACE	L REAR BODY RAIL		65710-22300	258.12	4.5 #	7.0T	
59	001490	BDY	REMOVE/REPLACE	REAR BODY SCUFF PLATE		85770-22000-LG	17.78	INC	0.2T	
60	001514	BDY	REMOVE/REPLACE	R COMBINATION LAMP ASSEMBLY		92402-22050	86.44	INC	0.4T	
61	001515	BDY	REMOVE/REPLACE	L COMBINATION LAMP ASSEMBLY		92401-22050	86.44	INC	0.4T	
62	AUTO	BDY	OVERHAUL	REAR COVER ASSY				0.4	1.2	
63	001548	BDY	REMOVE/REPLACE	REAR BUMPER COVER		Recored	120.00*	INC	1.2T	
64	AUTO	REF	REFINISH	REAR BUMPER COVER				C 2.2	2.2	
65	001549	BDY	REMOVE/REPLACE	REAR BUMPER GROMMET		86140-21000	5.24*	INC	T	
66				4 GROMENTS @ 1.31 EA						
67	001551	BDY	REMOVE/REPLACE	R REAR BUMPER BRACE		86634-22000	18.62	INC	T	
68	001552	BDY	REMOVE/REPLACE	L REAR BUMPER BRACE		86633-22000	18.62	INC	T	
69	001553	BDY	REMOVE/REPLACE	R REAR BUMPER RETAINER		86590-28000	3.45*	INC	T	
70	001554	BDY	REMOVE/REPLACE	L REAR BUMPER RETAINER		86590-28000	3.45*	INC	T	
71				3 @ 1.15 EACH SIDE						
72	900500	REF*	ADD'L LABOR OP	FLEX ADDITIVE 2 PNLS		Sublet	16.00*	0.0*		
73	900500	REF*	ADD'L LABOR OP	CAULK/SEAM SEALER		Sublet	15.00*	0.0*		
74	900500	FRM*	ADD'L LABOR OP	FRAME SETUP AND MEASURE		Sublet	50.00*	0.0*		
75	900500	FRM*	REPAIR	UNIBODY REAR		Existing		4.0*		
76	001555	BDY	REMOVE/REPLACE	R REAR BUMPER REINFORCEMENT		86696-22000	1.86	INC	T	
77	001556	BDY	REMOVE/REPLACE	L REAR BUMPER REINFORCEMENT		86696-22000	1.86	INC	T	
78	001557	BDY	REMOVE/REPLACE	REAR BUMPER HONEYCOMB REINF		86620-22050	143.93	INC	1.2T	
79	001558	BDY	REMOVE/REPLACE	REAR BUMPER RAIL		86630-22050	236.09	INC	1.2T	
80	936001		ADD'L COST	TOWING			86.00*			
81	AUTO	REF	ADD'L OPR	CLEAR COAT				2.5*		
82	933003	BDY*	ADD'L OPR	TINT COLOR				0.5*		
83	933004	BDY	ADD'L OPR	UNDERCOATING			10.00*	0.0*		
84	933008	REF	ADD'L OPR	CHIP RESISTANT MATERIAL APPLICATION			10.00*	0.0*		
85	933017	BDY*	ADD'L OPR	COLOR SAND & BUFF				2.0*		
86	933018	BDY*	ADD'L OPR	MASK FOR OVERSPRAY			10.00*	0.0*		

TOTAL LOSS

TOTAL LOSS

ESTIMATE RECALL NUMBER: 2/12/98 08:02:44 RM000937-14

Mitchell Data Version: FEB_98_A

50053162D

Date: 02/12/98 08:03 AM
Estimate ID: RM000937-14
Committed
Profile ID: MERCURY

87 AUTO ADD'L COST PAINT/MATERIALS 300 00

* - Judgement Item
# - Labor Note Applies
C - Included in Clear Coat Calc

I Labor Sublotals	Units	Rate	Add'l Labor Amount	Sublet Amount	Totals
Body	71.8	25 00	20.00	75.00	1,890.00
Refinish	24.7	25.00	10 00	31 00	658.50
Frame	7 0	35 00	0 00	50.00	295.00
Non-Taxable Labor					2,843 50
Labor Summary	103.5				2,843 50

III Additional Costs			Amount
Taxable Costs			300 00
Sales Tax	@	7 750%	23.25
Non-Taxable Costs			86 00
Total Additional Costs			409.25

TOTAL LOSS

II Part Replacement Summary			Amount
Taxable Parts			3,670.6
Parts Adjustments			171 5
Sales Tax	@	7 750%	271 1
Total Replacement Parts Amount			3,770 4

IV Adjustments	Amount
Insurance Deductible	500.0
Customer Responsibility	500 0

TOTAL LOSS

I	Total Labor:	2,843 5
II	Total Replacement Parts:	3,770.4
III	Total Additional Costs:	409.2
	Gross Total:	7,023.2
IV	Total Adjustments:	500 0
	Net Total:	6,523 2

Point(s) of Impact

6 Rear Center (P), 5 Right Rear Corner (S), 7 Left Rear Corner (S), 12 Front Center (S)

Insurance Co: MERCURY INSURANCE GROUP
Address: PO BOX 1150
BREA, CA 92622
Telephone: (714) 671-6600

TOTAL LOSS

ESTIMATE RECALL NUMBER: 2/12/98 08:02:44 RM000937-14

Mitchell Data Version: FEB_98_A

50053163D

BUYER'S NAME | DATE CONTRACT | Stock No.

BUYER'S RESIDENCE OR PLACE OF BUSINESS | ZIP CODE | AGREEMENT No. | Source

Salesman

CO-BUYER'S NAME AND ADDRESS | Date 1-24-96

Bus.Phone 396-3944

Res.Phone 780-6229

In this contract the words "we," "us" and "our" refer to the creditor (seller) named below or, upon any assignment, its assignee. The words "you" and "your" refer to the buyer and co-buyer if any named herein. We sell you the motor vehicle described below on credit. The credit price is shown below as the "Total Sale Price." The "Cash Price" is also shown below. By signing this contract you choose to buy the "vehicle" on credit and agree to pay the Total Sale Price, according to the schedules, terms and agreements shown on the front and back of this contract. If this contract is signed by a buyer and co-buyer, each is individually and together responsible for all agreements in the contract.

SEE OTHER SIDE FOR ADDITIONAL TERMS AND AGREEMENTS:

NEW/USED	YEAR	MAKE	CYL.	DIESEL	GAS	OTHER	BODY STYLE	MODEL	ODOMETER READING	VEHICLE IDENTIFICATION NUMBER
[illegible]	[illegible]	[illegible]					[illegible]	[illegible]		[illegible]
	COLOR	TRIM		TIRES			TRANS	KEY NO.	LIC. NO.	R.O.S. NO.
	[illegible]							E0569		

DISCLOSURES PURSUANT TO THE TRUTH-IN-LENDING ACT

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid after you have made all payments as scheduled.	The total cost of your purchase on credit, including your down payment of $ 1400.00
[illegible] %	$ [illegible]	$ [illegible]	$ 13788.80	$ 14538.80

YOUR PAYMENT SCHEDULE WILL BE:

Number of Payments:	Amount of Payments:	When Payments Are Due:
One Payment of	650.00	2-21-96
One Payment of		
59 Payments	[illegible]	Monthly, beginning 3-09-96
One Final Payment	[illegible]	2-09-01

SECURITY: You are giving a security interest in the goods or property being purchased.
LATE CHARGES: If any payment is more than 10 days late you may be charged 5% of the late amount.
PREPAYMENT: If you pay early, you may be entitled to a refund of part of the finance charge.
See your contract documents for any additional information about nonpayment, default, any required prepayment in full before the scheduled date and prepayment refunds.

NOTICES: The names and addresses of all persons to whom the notices required or permitted by law to be sent are set forth at the top of this form.
If you are buying a used vehicle with this contract, as indicated in the description of the vehicle above, federal regulation may require a special buyers guide to be displayed on the window.
THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

STATEMENT OF INSURANCE

NOTICE: No person is required as a condition of financing the purchase of a motor vehicle to purchase, or negotiate; any insurance through a particular insurance company, agent or broker.

You have requested Seller to include in the balance due under this agreement the following insurance. Insurance is to expire WITH ☐ BEFORE ☐ AFTER ☐ the due date of the final installment. Buyer requests seller to procure insurance upon the described property against fire, theft, and collision for the term of this agreement. Any insurance will not be in force until accepted by the insurance carrier.

			Premium
$ N/a DED.: COMP., FIRE & THEFT		Mos.	$ N/a
$ N/a DEDUCTIBLE COLLISION		Mos.	$ N/a
BODILY INJURY $ N/a	LIMITS	Mos.	$ N/a
PROPERTY DAMAGE $ N/a	LIMITS	Mos.	$ N/a
MEDICAL N/a		Mos.	$ N/a
N/a		Mos.	$ N/a

TOTAL VEHICLE INSURANCE PREMIUMS $ N/a (a)

The foregoing declarations are hereby acknowledged.

DATE 24 96 X [signature] SELLER X [signature] BUYER

CREDIT INSURANCE AUTHORIZATION AND APPLICATION

You voluntarily request the credit insurance checked below, if any, and understand that such insurance is not required. You acknowledge disclosure of the cost of such insurance and authorize it to be included in the balance payable under the security agreement. Any returned or refunded credit insurance premiums shall be applied to sums due under this contract. Only the persons whose names are signed below are insured.

CREDIT LIFE ______ Mos. Premium $ N/a
JOINT LIFE ______ Mos. Premium $ N/a
CREDIT DISABILITY ______ Mos. Premium $ N/a
TOTAL CREDIT INSURANCE PREMIUMS $ N/a (b)

☐ You want Credit Life Insurance ☒ You do not want Credit Life Insurance
☐ You want Credit Disability Insurance (Primary Buyer Only)
☒ You do not want Credit Disability Insurance
☐ You want Joint Credit Life Insurance

You are applying for the credit insurance marked above. Your signature below means that you agree that: (1) You are not eligible for insurance if you have reached your 65th birthday. (2) You are eligible for disability insurance only if you are working for wages or profit 30 hours a week or more on the Effective Date. (3) Only the Primary Buyer is eligible for disability insurance.
DISABILITY INSURANCE MAY NOT COVER CONDITIONS FOR WHICH YOU HAVE SEEN A DOCTOR OR CHIROPRACTOR IN THE LAST 6 MONTHS (refer to "Total Disabilities Not Covered" in your policy or certificate for details).

DATE X [signature] PRIMARY BUYER AGE
DATE 24 96 X [signature] CO-BUYER AGE ID-1

INVOLUNTARY UNEMPLOYMENT INSURANCE

I request involuntary unemployment insurance and authorize the premium shown below to be included in the balance payable under this security agreement.

INVOLUNTARY UNEMPLOYMENT ____ MONTHS PREMIUM $ ____ (c)

You are eligible for involuntary unemployment insurance only if you are currently working for salary or wages 30 hours a week or more and have done so for at least the last 12 months and you are not self employed or an independent contractor. Only the Primary Buyer is eligible for involuntary unemployment insurance.

Date ______ Primary Buyer X [signature]

ITEMIZATION OF AMOUNT FINANCED

1. A. Cash Price Motor Vehicle and Accessories $ 10680.00 (A)
   1. Cash Price Vehicle $ 10680.00
   2. Cash Price Accessories $ Incl
   B. Document Preparation Charge $ 35.00 (B)(not a governmental fee)
   C. Smog Fee Paid to Seller $ N/a (C)
   D. Smog Exemption Donation Fee $ N/a (D)(paid to State)
   E. Sales Tax (on A+B+C) $ 830.41 (E)
   F. Luxury Tax $ N/a (F)
   G. Service Contract (optional) $ N/a (G)
   H. Other $ N/a (H)
   To whom paid ______
   TOTAL CASH PRICE (A to H) $ 11545.41 (1)
2. AMOUNTS PAID TO PUBLIC OFFICIALS
   A. License $ 252.00 (A) Estimated
   B. Registration $ Inc. (B)
   C. Smog Impact Fee $ N/a (C)
   TOTAL OFFICIAL FEES (A+B+C) $ 252.00 (2)
3. AMOUNT PAID TO INSURANCE COMPANIES:
   (Total premiums per Statement of Insurance a + b) $ N/a (3)
4. SMOG CERTIFICATION FEE PAID TO STATE $ N/a (4)
5. TOTAL (1 TO 4) $ 11797.41 (5)
6. A. Trade-In (Description)
   Yr ____ Make ____
   Model ____ $ N/a (A)
   V.I.N. ____
   Odometer ____
   B. Less Pay Off $ N/a (B)
   C. TRADE-IN (A less B) $ N/a (C)
   D. Deferred downpayment due before ____ second installment payment $ 650.00 (D)
   E. MFR'S Rebate $ 750.00 (E)
   F. Remaining cash downpayment $ N/a (F)
   TOTAL DOWNPAYMENT (6C+D+E+F) $ 1400.00 (6)
7. AMOUNT FINANCED (5 less 6) $ 10397.41 (7)

PREPAYMENT REFUND: Any refund for prepayment in full will be calculated as follows:
☐ according to the Actuarial Method
☐ according to the Sum of the Periodic Time Balances
☐ according to the Rule of 78's
(If no box is checked the method for calculating the prepayment refund will be deemed to be the Sum of the Periodic Time Balances)

VEHICLE USE: ☒ Personal, Family or Household ☐ Commercial or Agricultural

OFFICIAL FEES (Not Financed): The Buyer will pay the estimated fee(s) of $ 10.00 to the appropriate public authority in order to transfer registration after payment in full.

OPTION: ☐ You pay no finance charge if the amount financed, item 7, is paid in full on or before ______ 19____. SELLERS INITIALS ______

SERVICE CONTRACT (Optional) You request a service contract written with the following company for the term below. The cost is shown in item (1G) above.

Company N/a Term N/a Months

Buyer X [signature] X [signature]

BROKER FEE DISCLOSURE

If this Contract reflects the retail sale of a new motor vehicle the sale is not subject to a fee received by an autobroker unless the following box is checked:

☐ Name of Autobroker receiving fee, if applicable:

SELLER ASSISTED LOAN: FOR THIS LOAN, BUYER MAY BE REQUIRED TO PLEDGE SECURITY AND WILL BE OBLIGATED FOR THE INSTALLMENT PAYMENTS ON BOTH THE SECURITY AGREEMENT AND THE LOAN.

Proceeds of Loan - From ______

50053264D

DATE PRIMARY BUYER AGE

1-24-96 X Diane L. Hartung ID-1

DATE CO-BUYER AGE

INVOLUNTARY UNEMPLOYMENT INSURANCE

I request involuntary unemployment insurance and authorize the premium shown below to be included in the balance payable under this security agreement

INVOLUNTARY UNEMPLOYMENT ____ MONTHS PREMIUM $ ____ (c)

You are eligible for involuntary unemployment insurance only if you are currently working for salary or wages 30 hours a week or more and have done so for at least the last 12 months and you are not self employed or an independent contractor. Only the Primary Buyer is eligible for involuntary unemployment insurance.

Date _____ Primary Buyer X _____

BROKER FEE DISCLOSURE

If this Contract reflects the retail sale of a new motor vehicle the sale is not subject to a fee received by an autobroker unless the following box is checked:

☐ Name of Autobroker receiving fee, if applicable:

_____

_____

Sum of the Periodic Time Balances)

VEHICLE USE: [x] Personal, Family or Household ☐ Commercial or Agricultural

OFFICIAL FEES (Not Financed): The Buyer will pay the estimated fee(s) of $ 10.00 to the appropriate public authority in order to transfer registration after payment in full

OPTION: ☐ You pay no finance charge if the amount financed, item 7, is paid in full on or before _____ 19 ____. SELLERS INITIALS _____

SERVICE CONTRACT (Optional) You request a service contract written with the following company for the term below. The cost is shown in item (1G) above

Company _____ Term N/A Months

Buyer X _____ X Diane L. Hartung

SELLER ASSISTED LOAN: FOR THIS LOAN, BUYER MAY BE REQUIRED TO PLEDGE SECURITY AND WILL BE OBLIGATED FOR THE INSTALLMENT PAYMENTS ON BOTH THE SECURITY AGREEMENT AND THE LOAN.

Proceeds of Loan - From: _____

Amount $ N/A Finance Charge $ N/A Total $ N/A

Payable N/A installments of $ _____

$ _____ from this loan is described in (6D) above.

If you have a complaint concerning this sale, you should try to resolve it with the seller.

Complaints concerning unfair or deceptive practices or methods by the seller may be referred to the city attorney, the district attorney, or the Department of Motor Vehicles, Division of Investigations and Occupational Licensing, P.O. Box 93209, Sacramento, California 94232-3090, or any combination thereof.

After this contract is signed, the seller may not change the financing or payment terms unless you agree in writing to the change. You do not have to agree to any change, and it is an unfair or deceptive practice for the seller to make a unilateral change.

Buyer's Signature X _____ X Diane L. Hartung

THE MINIMUM PUBLIC LIABILITY INSURANCE LIMITS PROVIDED IN LAW MUST BE MET BY EVERY PERSON WHO PURCHASES A VEHICLE. IF YOU ARE UNSURE WHETHER OR NOT YOUR CURRENT INSURANCE POLICY WILL COVER YOUR NEWLY ACQUIRED VEHICLE IN THE EVENT OF AN ACCIDENT, YOU SHOULD CONTACT YOUR INSURANCE AGENT.

WARNING: YOUR PRESENT POLICY MAY NOT COVER COLLISION DAMAGE OR MAY NOT PROVIDE FOR FULL REPLACEMENT COSTS FOR THE VEHICLE BEING PURCHASED. IF YOU DO NOT HAVE FULL COVERAGE, SUPPLEMENTAL COVERAGE FOR COLLISION DAMAGE MAY BE AVAILABLE TO YOU THROUGH YOUR INSURANCE AGENT OR THROUGH THE SELLING DEALER. HOWEVER, UNLESS OTHERWISE SPECIFIED, THE COVERAGE YOU OBTAIN THROUGH THE DEALER PROTECTS ONLY THE DEALER, USUALLY UP TO THE AMOUNT OF THE UNPAID BALANCE REMAINING AFTER THE VEHICLE HAS BEEN REPOSSESSED AND SOLD.

FOR ADVICE ON FULL COVERAGE THAT WILL PROTECT YOU IN THE EVENT OF LOSS OR DAMAGE TO YOUR VEHICLE, YOU SHOULD CONTACT YOUR INSURANCE AGENT.

THE BUYER SHALL SIGN TO ACKNOWLEDGE THAT HE / SHE UNDERSTANDS THESE PUBLIC LIABILITY TERMS AND CONDITIONS.

S/S X _____ X Diane L. Hartung

THERE IS NO COOLING OFF PERIOD

California law does not provide for a "cooling off" or other cancellation period for vehicle sales. Therefore, you cannot later cancel this contract simply because you change your mind, decide the vehicle costs too much, or wish you had acquired a different vehicle. After you sign below, you may only cancel this contract with the agreement of the seller or for legal cause, such as fraud.

Buyer acknowledges that (1) before signing this agreement Buyer read both sides of this agreement and received a legible, completely filled-in copy of this agreement; and (2) Buyer has received a copy of every other document that Buyer signed during the contract negotiation.

Buyer's Signature X _____ Co-Buyer's Signature X _____

Seller _____ Address _____

By X _____ Title _____

LAW FORM NO. 554U QUAID (REV. 1/95) U.S. PATENT NO. 312,957 LAW PRINTING AUTOMOTIVE PRODUCTS CALL (800) 422-3102 © 1994 THE REYNOLDS AND REVNOLDS COMPANY The Printer makes no warranty express or implied as to content or fitness for purpose of this form. Consult your own legal counsel

TRUTH IN LENDING COPY 1. Give to BUYER prior to signing. 2. BUYER and SELLER Sign this copy AFTER contract is signed.

50053265D

HYUNDAI

Hyundai Motor America
10550 Talbert Avenue
P O Box 20850
Fountain Valley CA 92728-0850
Telephone 714 965-3000

WRITER'S DIRECT DIAL TELEPHONE:
(714) 965-3320

WRITER S DIRECT DIAL FAX NO.:
(714) 965-3834

March 9, 1998

Mr. and Mrs. Martinez
15181 Van Buren, #26
Riverside, CA 92540

Dear Mr. and Mrs. Martinez:

Hyundai Motor America is in the process of evaluating your request for assistance relating to an accident in your Hyundai Accent. On February 10, 1998, we sent a letter to you requesting additional information. As of today, we have not received any of the documentation from you.

Please forward the following documents as soon as possible:

a. Photographs of your damaged Hyundai, including:
   (1) front end, sides and rear
   (2) engine compartment
   (3) front and rear interior
   (4) VIN plate (top left side of dashboard, next to windshield

b. Any documents reflecting payments to you by your insurance company.

c. An itemized list of the damages you are claiming, including lender information, and attach any supporting documents you may have in your possession.

d. A description of the Hyundai vehicle, including the 17-digit Vehicle Identification Number and mileage.

e. All reports indicating the cause of the fire (fire department, police department, etc.)

f. The date, location and details of the incident, including the usage of the vehicle prior to the fire.

g. Purchase agreement/bill of sale.

h. Repair/maintenance invoices in your possession.

I would also like to refer you to your Owner's Manual, pages 1-14 through 1-16 and the enclosed airbag brochures for information relating to the operation of the airbag system in your vehicle.

We are unable to complete our evaluation until the above documentation is received. Thank you for your cooperation.

Sincerely,

Sandy Zielomski
Consumer Affairs Supervisor
Western Region

sz/martinez-pir

EXHIBIT H

File: 425387 - Status: X3 - VIN: KMHVD34NXVU287652 (Model: Accent GS) 1997

MCQUARY, LEON(TOM)
9666 BEAVER RD
PHELAN, CA 92371

File	Type	Line	Comment Contents
425387	O	1	3/9/98 (MSMITH) CUST STATES:
		2	1. CLAIMS HE WAS IN AN ACCIDENT FRIDAY (3/6/98).
		3	2. CLAIMS THAT A SUBURBAN HIT HIM FROM BEHIND PUSHING HIM INTO THE VEH IN
		4	FRONT OF HIM.
		5	3. CLAIMS THAT WHEN THE SUBURBAN HIT HIM THE SEAT COLLAPSED AND WHEN HE HIT
		6	THE VEH IN FRONT OF HIM THE AIR BAGS DID NOT DEPLOY.
		7	4. CLAIMS A POLICE REPORT WAS FILED.
		8	5. CLAIMS HE WAS THE ONLY OCCUPANT OF THE VEH AND WEARING HIS SEATBELT.
		9	6. CLAIMS HE SUSTAINED NECK INJURIES (SORE) AND A WELT ON HIS KNEE.
		10	7. CLAIMS VEH IS AT A STORAGE GARAGE NOW BUT THAT HIS INSURANCE COMPANY
		11	(ALLSTATE) IS SENDING IT TO SUNSET AUTO BODY (760)244-8115 TODAY.
		12	8. CLAIMS IS UNSURE IF HE IS GOING TO TAKE IT TO A HYUNDAI DLRSHP.
		13	9. CLAIMS THAT THERE ARE NO BILLS RELATED TO THIS ACCIDENT AS OF YET.
		14	10. REQUESTING THAT SOMEONE FROM HMA CONTACT HIM IN REGARDS TO THIS CONCERN.
		15	HE IS CONCERNED ABOUT THE SEAT COLLAPSING AND OTHER DRIVERS OF HYUNDAI.
		16	--WRITER ADVISED CUST COMMENTS AND CONCERNS WOULD BE NOTED IN FILE. WRITER
		17	ADVISED CUST THE FILE WILL BE FORWARDED TO THE REGION FOR INVESTIGATION.
		18	WRITER ADVISED CUST HMA/NCA WILL SEND HIM A "DOCREQ" LETTER TO FILL OUT AND
		19	THEN SUBMIT BACK TO HMA ALONG WITH REQUESTED PAPERWORK. WRITER ADVISED CUST
		20	HE WILL BE CONTACTED WHEN THE INVESTIGATION IS COMPLETE. WRITER FORWARDING
		21	FILE TO (JWILL) TO MAIL "DOCREQ" LETTER.

22 ********** OPENED FROM INQUIRY STATUS ---- 03/09/98 **********

23 ----------

24 3/10/98 (JWILL) WRITER MAILED OUT "DOCREQ" LETTER TO THE CUSTOMER.

25 -----

26 03/27/98 SZ/WRCA: REC'D RESPONSE FROM LEGAL ON PIR. LEGAL DEPT. NEEDS

27 ADDITIONAL INFORMATION FROM CUST. TO COMPLETE RE-EVALUATION. PLEASE FORWARD

28 ALL DOCUMENTS RECEIVED FROM CUST. PURSUANT TO DOCREQ LETTER TO WRCA AS SOON

29 AS THEY ARE RECEIVED.

S 1 PERFROMED PIR ON 3-18-98 DETAILS TO NATIONAL ON 3-23-98

File: 425387 - Status: X3 - VIN: KMHVD34NXVU287652 Model: Accent (X3) 1997

MCQUARY, LEON(TOM)
9666 BEAVER RD
PHELAN, CA 92371

File	Type	Line	Comment Contents
425387	O	1	3/9/98 (MSMITH) CUST STATES:
		2	1. CLAIMS HE WAS IN AN ACCIDENT FRIDAY (3/6/98).
		3	2. CLAIMS THAT A SUBURBAN HIT HIM FROM BEHIND PUSHING HIM INTO THE VEH IN
		4	FRONT OF HIM.
		5	3. CLAIMS THAT WHEN THE SUBURBAN HIT HIM THE SEAT COLLAPSED AND WHEN HE HIT
		6	THE VEH IN FRONT OF HIM THE AIR BAGS DID NOT DEPLOY.
		7	4. CLAIMS A POLICE REPORT WAS FILED.
		8	5. CLAIMS HE WAS THE ONLY OCCUPANT OF THE VEH AND WEARING HIS SEATBELT.
		9	6. CLAIMS HE SUSTAINED NECK INJURIES (SORE) AND A WELT ON HIS KNEE.
		10	7. CLAIMS VEH IS AT A STORAGE GARAGE NOW BUT THAT HIS INSURANCE COMPANY
		11	(ALLSTATE) IS SENDING IT OT SUNSET AUTO BODY (760)244-8115 TODAY.
		12	8. CLAIMS IS UNSURE IF HE IS GOING TO TAKE IT TO A HYUNDAI DLRSHP.
		13	9. CLAIMS THAT THERE ARE NO BILLS RELATED TO THIS ACCIDENT AS OF YET.
		14	10. REQUESTING THAT SOMEONE FROM HMA CONTACT HIM IN REGARDS TO THIS CONCERN,
		15	HE IS CONCERNED ABOUT THE SEAT COLLAPSING AND OTHER DRIVERS OF HYUNDAI.
		16	----WRITER ADVISED CUST COMMENTS AND CONCERNS WOULD BE NOTED IN FILE. WRITER
		17	ADVISED CUST THE FILE WILL BE FORWARDED TO THE REGION FOR INVESTIGATION.
		18	WRITER ADVISED CUST HMA/NCA WILL SEND HIM A "DOCREQ" LETTER TO FILL OUT AND
		19	THEN SUBMIT BACK TO HMA ALONG WITH REQUESTED PAPERWORK. WRITER ADVISED CUST
		20	HE WILL BE CONTACTED WHEN THE INVESTIGATION IS COMPLETE. WRITER FORWARDING
		21	FILE TO (JWILL) TO MAIL "DOCREQ" LETTER.

22 ********** OPENED FROM INQUIRY STATUS: 03/09/98 **********

23 ----------

24 3/10/98 (JWILL) WRITER MAILED OUT "DOCREQ" LETTER TO THE CUSTOMER.

25 -----

26 03/27/98 SZ/WRCA: REC'D RESPONSE FROM LEGAL ON PIR. LEGAL DEPT. NEEDS

27 ADDITIONAL INFORMATION FROM CUST. TO COMPLETE EVALUATION. PLEASE FORWARD

28 ALL DOCUMENTS RECEIVED FROM CUST. PURSUANT TO DOCREQ LETTER TO WRCA AS SOON

29 AS THEY ARE RECEIVED.

S 1 PERFROMED PIR ON 3-18-98, DETAILS TO NATIONAL ON 3-23-98

No. 29347-1-II

DIVISION II, COURT OF APPEALS
OF THE STATE OF WASHINGTON

JESSE MAGANA,

Plaintiff/Respondent

v.

HYUNDAI MOTOR AMERICA; HYUNDAI MOTOR COMPANY; and RICKY and ANGELA SMITH, husband and wife,

Defendants/Appellants

and

DENNIS NYLANDER and JANE DOE NYLANDER,

Defendants

ON APPEAL FROM CLARK COUNTY SUPERIOR COURT
(Hon. Barbara D. Johnson)

DECLARATION OF SERVICE

Michael B. King
WSBA No. 14405
LANE POWELL PC
Attorneys for Appellants Hyundai Motor America and Hyundai Motor Company

Lane Powell PC
1420 Fifth Avenue, Suite 4100
Seattle, Washington 98101
Telephone: (206) 223-7000
Facsimile: (206) 223-7107

Jeffrey D. Austin
OSBA No. 83142
MILLER NASH LLP
Attorneys for Appellants Hyundai Motor America and Hyundai Motor Company

Miller Nash LLP
111 S.W. Fifth Avenue, Suite 3400
Portland, Oregon 97204
Telephone: (503) 205-2483
Facsimile: (503) 224-0155

I, Kathryn Savaria, declare under penalty of perjury as follows:

1. I am now and at all times herein mentioned, a citizen of the United States and resident of the State of Washington, over the age of eighteen years, not a party to the above-captioned action, and competent to testify as a witness.

2. I am employed with the law firm of Lane Powell PC, 1420 Fifth Avenue, Suite 4100, Seattle, Washington.

3. On September 29, 2006, I caused to be served true copies of the following documents:

Letter to Case Manager from Michael King dated 09/29/06

Motion for Acceptance of Overlength Brief

Appellants' Opening Brief

Motion to Transfer Verbatim Reports of Proceedings

Declaration of Service

on the following parties in the manner as indicated below:

Jeffrey D. Austin, Esq.
Heather Cavanaugh, Esq.
Miller Nash LLP
3400 US Bancorp Tower
111 SW 5TH AVE
Portland, OR 97204-3699
Facsimile: (503) 224-0155

☒ U.S. Mail
☐ Facsimile
☒ E-mail (courtesy copy)
☐ FedEx
☐ Legal Messenger

Paul W. Whelan, Esq.
Peter O'Neil, Esq.
Alisa K. Brodkowitz, Esq.
Stritmatter Kessler Whelan Withey & Coluccio
200 - 2ND AVE W
Seattle, WA 98119-4204
Facsimile: (206) 728-2131

☒ U.S. Mail
☐ Facsimile
☒ E-mail (courtesy copy)
☐ FedEx
☐ Legal Messenger

Doug F. Foley Esq.
Foley Buxman, PLLC
Park Tower V
13115 NE Fourth Street, Suite 260
Vancouver, WA 98684
Fax: (360) 944-6808
Email: doug.foley@foleybuxman.com

☒ U.S. Mail
☐ Facsimile
☒ E-mail (courtesy copy)
☐ FedEx
☐ Legal Messenger

Derek J. Vanderwood, Esq.
English, Lane, Marshall, Stahnke & Vanderwood
12204 S.E. Mill Plain Boulevard,
Suite 200
Vancouver, Washington 98684
Telephone: (360) 449-6100
Facsimile: (360) 449-6111

☒ U.S. Mail
☐ Facsimile
☐ E-mail
☐ FedEx
☐ Legal Messenger

The foregoing statements are made under penalty of perjury under the laws of the State of Washington and are true and correct.

Signed at Seattle, Washington, this 29th day of September, 2006.

Kathryn Savaria

Kathryn Savaria

No. 29347-1-II

DIVISION II, COURT OF APPEALS
OF THE STATE OF WASHINGTON

JESSE MAGANA,

Plaintiff/Respondent

v.

HYUNDAI MOTOR AMERICA; HYUNDAI MOTOR COMPANY; and RICKY and ANGELA SMITH, husband and wife,

Defendants/Appellants

and

DENNIS NYLANDER and JANE DOE NYLANDER,

Defendants

ON APPEAL FROM CLARK COUNTY SUPERIOR COURT
(Hon. Barbara D. Johnson)

DECLARATION OF SERVICE

Michael B. King
WSBA No. 14405
LANE POWELL PC
Attorneys for Appellants Hyundai Motor America and Hyundai Motor Company

Lane Powell PC
1420 Fifth Avenue, Suite 4100
Seattle, Washington 98101
Telephone: (206) 223-7000
Facsimile: (206) 223-7107

Jeffrey D. Austin
OSBA No. 83142
MILLER NASH LLP
Attorneys for Appellants Hyundai Motor America and Hyundai Motor Company

Miller Nash LLP
111 S.W. Fifth Avenue, Suite 3400
Portland, Oregon 97204
Telephone: (503) 205-2483
Facsimile: (503) 224-0155

I, Kathryn Savaria, declare under penalty of perjury as follows:

1. I am now and at all times herein mentioned, a citizen of the United States and resident of the State of Washington, over the age of eighteen years, not a party to the above-captioned action, and competent to testify as a witness.

2. I am employed with the law firm of Lane Powell PC, 1420 Fifth Avenue, Suite 4100, Seattle, Washington.

3. On January 9, 2007, I caused to be served true copies of the following documents:

Letter to Case Manager from Michael King dated 01/09/07

Two Correction Pages to Appellants' Opening brief

Declaration of Service

on the following parties in the manner as indicated below:

Jeffrey D. Austin, Esq. Heather Cavanaugh, Esq. Miller Nash LLP 3400 US Bancorp Tower 111 SW 5TH AVE Portland, OR 97204-3699 Facsimile: (503) 224-0155	☒ U.S. Mail ☐ Facsimile ☐ E-mail (courtesy copy) ☐ FedEx ☐ Legal Messenger
Paul W. Whelan, Esq. Stritmatter Kessler Whelan Withey & Coluccio 200 - 2ND AVE W Seattle, WA 98119-4204 Facsimile: (206) 728-2131	☒ U.S. Mail ☐ Facsimile ☐ E-mail (courtesy copy) ☐ FedEx ☐ Legal Messenger

Doug F. Foley Esq.
Foley Buxman, PLLC
Park Tower V
13115 NE Fourth Street, Suite 260
Vancouver, WA 98684
Fax: (360) 944-6808
Email: doug.foley@foleybuxman.com

☒ U.S. Mail
☐ Facsimile
☐ E-mail (courtesy copy)
☐ FedEx
☐ Legal Messenger

Derek J. Vanderwood, Esq.
English, Lane, Marshall, Stahnke & Vanderwood
12204 S.E. Mill Plain Boulevard,
Suite 200
Vancouver, Washington 98684
Telephone: (360) 449-6100
Facsimile: (360) 449-6111

☒ U.S. Mail
☐ Facsimile
☐ E-mail
☐ FedEx
☐ Legal Messenger

Charles K Wiggins, Esq.
Kenneth W. Masters, Esq.
Wiggins & Masters PLLC
241 Madison AVE N
Bainbridge Island, WA 98110
Tel: 206-780-5033
Fax: 206-842-6356

☒ U.S. Mail
☐ Facsimile
☐ E-mail
☐ FedEx
☐ Legal Messenger

The foregoing statements are made under penalty of perjury under the laws of the State of Washington and are true and correct.

Signed at Seattle, Washington, this 9th day of January, 2007.

Kathryn Savaria

Kathryn Savaria